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STATE OF CALIFORNIA



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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

3 SENATOR JOHN BURTON, Chair

4 SENATOR ROSA DELEON, Vice Chair

5 SENATOR BETTY BARNETTE

6 SENATOR WILLIAM KEEFITT

HEARING

7 SENATOR GLORIA ROMERO

8 CHRIS SCHWELL, Executive Director

9 PAT KELLY, Consultant for Statewide

10 STATE CAPITOL

11 UNITED STATES CONGRESS

12 ROOM 113

13 ROB GALT, Director of Strategic Initiatives

14 CHRISSIE BROWN, Consultant for Strategic Initiatives

15 ERIC WILSON, Director of Strategic Initiatives

16 WEDNESDAY, APRIL 9, 2003

17 1:36 P.M.

18 Reported by:

20 Evelyn J. Mizak
21 Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

CARY RUDMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

ARTHUR G. BAGGETT, JR., Member
State Water Resources Control Board

SENATOR BYRON SHER

LINDA SHEEHAN
The Ocean Conservancy

RICHARD LEHMAN
Private Citizen

BILL MAGAVERN
Sierra Club California

SHERYL CARTER
Natural Resources Defense Council

FRANCES SPIVY-WEBER, Executive Director
Mono Lake Committee

1 KAREN DOUGLAS
2 Planning and Conservation League

3 DANIEL HIRSCH (neutral)
4 Committee to Bridget the Gap

5 GARY M. CARLTON, Member
6 State Water Resources Control Board

7 SUSAN P. KENNEDY, Member
8 Public Utilities Commission

9 SCOTT WETCH
10 Coalition of Utility Employees

11 ITZEL BERRIO
12 The Greenlining Institute

13 MISTER PHILLIPS, on behalf of MARY ANN MITCHELL
14 Greenlining Institute, National Black Business Council

15 JIM GORDON, Assistant to Vice President
16 Communications Workers of America

17 IGNACIO HERNANDEZ
18 Consumer Federation of California

19 V. JOHN WHITE
20 Center for Energy Efficiency and Renewable Technologies

21 BARRY BROAD
22 Teamsters, UFCW, Machinists

23 MIKE FLORIO
24 TURN

25

26

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28

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
ARTHUR G. BAGGETT, JR., Member State Water Resources Control Board	1
Background and Experience	1
Introduction and Support by SENATOR BYRON SHER	2
Questions by CHAIRMAN BURTON re:	
Number of Regional Boards Lacking Members	3
Request for List of Boards with Vacancies	4
MOU with Board of Forestry	4
Effect of Governor's Budget Cuts on Ability to Monitor	5
Contemplated Actions to Regulate Agricultural Discharge in Water	5
Petitions to Central Valley Board	6
Fees in AB 10X	6
Federal or State Programs for Long-term Low Interests Loans to Small Farmers	7
Clean Beach Money	8
Questions by SENATOR ROMERO re:	
Plans for Additional Landfill Sampling	9
Timeline for Data Results	10

1 Sufficiency of Funds for Tests 10

2 Witnesses in Support:

3 LINDA SHEEHAN

4 The Ocean Conservancy in San Francisco 11

5 RICHARD LEHMAN

6 Speaking as Private Citizen 11

7 BILL MAGAVERN

8 Sierra Club California 12

9 SHERYL CARTER

10 Natural Resources Defense Council 13

11 FRANCES SPIVY-WEBER, Executive Director

12 Mono Lake Committee 13

13 KAREN DOUGLAS

14 Planning and Conservation League 14

15 Witness with Concerns:

16 DAN HIRSCH

17 Committee to Bridge the Gap 14

18 Questions by CHAIRMAN BURTON re:

19 Salton Sea Order 15

20 Questions by SENATOR ROMERO re:

21 Concerns that Studies of Landfill

22 Radiation Might Delay Action 16

23 Request for Timeline and Scope of

24 Sampling 16

25 Motion to Confirm 17

26 Committee Action 17

27 GARY M. CARLTON, Member

28 State Water Resources Control Board 17

1 Request by CHAIRMAN BURTON re:

2 Answer Questions Posed to Previous
3 Nominee in Lieu of Opening Remarks 17

4 Low Level Radiation Monitoring of Landfills 18

5 Questions by CHAIRMAN BURTON re:

6 Role in Overseeing North Coast
7 Regional Board 19

8 Stronger Role for Water Boards in
9 Timber Harvest Plans 19

10 Questions by SENATOR ROMERO re:

11 Possibility of Lengthy Delay in
12 Survey of Landfills 21

13 Motion to Confirm 22

14 Committee Action 22

15 SUSAN P. KENNEDY, Member
16 Public Utilities Commission 22

17 Background and Experience 22

18 Questions by SENATOR KNIGHT re:

19 Trip to Cuba 23

20 Agricultural Exports to Cuba 24

21 Questions by SENATOR KARNETTE re:

22 Exit Fee Structure 24

23 Questions by CHAIRMAN BURTON re:

24 Possibility of New Action on Exit
25 Fee Structure 25

26 Office of Economic Development 25

1	Reason Majority of Commission Voted to Apply DWR Bonds Charge to 130 Percent Baseline	26
2		
3	Possibility of Rehearing of Issue	27
4		
5	Revisiting Direct Access and Its Impact on Bundled Ratepayers	27
6		
7	Perception of Flaws in Deregulation or Its Implementation	28
8		
9	<u>Witnesses in Support:</u>	
10		
11	SCOTT WETCH Coalition of Utility Employees	29
12		
13	ITZEL BERRIO Greenlining Institute	29
14		
15	Comments by SENATOR ROMERO re:	
16		
17	Efforts Taken to Convince Governor to Appointment More Minorities	31
18		
19	MISTER PHILLIPS, on Behalf of MARY ANN MITCHELL, Board Member, Greenlining Institute and Chair, National Black Business Council	32
20		
21	JIM GORDON, Assistant to International Vice President, Communications Workers of America, District 9	33
22		
23	SHERYL CARTER Natural Resources Defense Council	34
24		
25	IGNACIO HERNANDEZ Consumer Federation of California	35
26		
27	BARRY BROAD Teamsters, Machinists, and United Food and Commercial Workers	35
28		
25	V. JOHN WHITE Center for Energy Efficiency and Renewable Technologies	35
26		

1	MIKE FLORIO, Senior Attorney	
2	TURN	36
3	Motion to Confirm	37
4	Committee Action	37
5	Termination of Proceedings	37
6	Certificate of Reporter	38
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

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3 CHAIRMAN BURTON: Governor's appointees today,
4 Art Baggett, State Water Resources Control Board.

5 MR. BAGGETT: Thank you, Senator Burton, Members
6 of the Committee on Rules. It is indeed a privilege and honor
7 to be back before you today.

8 As the record indicates, I am strongly committed
9 to the water resources in our state for our citizens and future
10 generations.

11 Water issues continue to be some of the most
12 complex and contentious in the state. These past four years our
13 board has been involved in issues ranging from North Coast
14 logging to Southern California beach pollution, from Mono Lake
15 to power plants on Morro Bay, from protecting the blue of Lake
16 Tahoe to over 40 days of hearings and the resulting order on the
17 Imperial Irrigation District, San Diego transfer, and impacts on
18 the Salton Sea.

19 My highest priority as a board member continues
20 to be effective, fair, and consistent enforcement of
21 California's water quality regulations, and to continue to
22 improve and protect the quality of our waters.

23 Second, I followed through with my commitment of
24 four years ago to this Committee to integrate actions across
25 agency lines. To this end, we have implemented the first ever
26 Memorandum of Understanding between our board and the California
27 Coastal Commission towards reducing nonpoint source pollution,
28 the first Memorandum of Understanding with the Division of

1 Forestry that more clearly defines and strengthens the role of
2 the water boards in the timber harvest plan process. We've also
3 held many joint meetings with other sister agencies: the
4 Integrated Waste Management Board, Fish and Game, and others.

5 Lastly, the shift to nonpoint source pollutants
6 has created a stronger reliance on watershed management
7 strategies. I've been working with Cal EPA and the Resources
8 Agency to facilitate on the ground relationships to better
9 utilize our respective roles in protecting water bodies and
10 rivers in the state from impairments as well as develop the
11 first strategic plan designed to better coordinate our agencies
12 and help local watershed groups.

13 I look forward to the opportunity to continue to
14 work with you and your staff in our mission to protect,
15 preserve, and restore the beneficial uses of our state's waters.

16 Thank you.

17 CHAIRMAN BURTON: Senator Sher.

18 SENATOR SHER: Thank you, Mr. Chairman.

19 I'm here to support Mr. Baggett in his second
20 confirmation hearing before the Committee and recommend him for
21 your support.

22 I've known Art for over a decade, both when he
23 was a Mariposa County Supervisor and more recently in his
24 capacity as Chair and member of the State Water Resources
25 Control Board.

26 I think he's done a good job, better than good,
27 an excellent job, over the past four years and deserves your
28 support.

1 As we know, the state and the regional water
2 boards have enormous challenges ahead in addressing water
3 quality problems, from such things as timber harvesting along
4 the North Coast, nonpoint water pollution problems in our
5 cities, polluted runoff from agriculture in the Central Valley,
6 and so forth. And Mr. Baggett, having served a full term as
7 Chair of the board, I know will be able to lead the board
8 through these difficult problems and to fulfill the obligations
9 that the board has under both state and federal clean water
10 laws.

11 I hope that he will work to convince the
12 administration that the current vacancy on the State Board, as
13 well as the chronic vacancies on the nine regional boards, need
14 to be filled with speed and with individuals who are committed
15 to the mission of those boards.

16 Thank you, Mr. Chairman.

17 CHAIRMAN BURTON: Thanks, Senator.

18 How many boards are not up to snuff?

19 MR. BAGGETT: Out of the nine regional boards, we
20 probably have two that have full nine-member boards, so the
21 balance, the remaining seven, don't have nine appointees. They
22 all have quorums, and they all have at least five members; most
23 of them have seven or eight.

24 CHAIRMAN BURTON: Now, if you've got a
25 five-member board, can they pass something three-to-two?

26 MR. BAGGETT: Depends on the issue. Usually it
27 takes five.

28 CHAIRMAN BURTON: Well, I would like, I guess,

1 the Committee staff to get us a list --

2 MR. BAGGETT: We'll be glad to provide that to
3 you.

4 CHAIRMAN BURTON: The ones with the vacancies,
5 because that's like not having a board.

6 MR. BAGGETT: Right. I'll provide that to you as
7 soon as I get back to the office.

8 CHAIRMAN BURTON: Tell me about the MOU with the
9 Board of Forestry.

10 MR. BAGGETT: What we've done is developed an
11 agreement between our executive officer and the executive
12 officer or Director Tuttle of the Department of Forestry. And
13 that agreement strengthens the role of the regional boards in
14 the review process, and sets some other guidelines to give
15 basically a second opportunity for the regional board's comments
16 to be considered by Department of Forestry staff.

17 In the past, they could just not -- if they
18 considered it, they'd check it off the list and go on to the
19 next part of the permit. Now they have give it another
20 opportunity. It's a procedural MOU at this point.

21 We're working on an additional one with Fish and
22 Game and all the timber, agencies involved with timber on
23 monitoring it, trying to come up with a standardized monitoring
24 protocol across agency lines, which is a little more complex.
25 That's in the process.

26 And third, we're having a meeting, a joint
27 meeting with the Board of Forestry in the Sierra in June for two
28 days, and on that discussion will come up not only the MOU with

1 the Director, but we'll also be talking about this management
2 agreement which has been in place for 20 years.

3 CHAIRMAN BURTON: What effect will the proposed
4 Governor's budget cuts have on your ability to monitor?

5 MR. BAGGETT: I mean, it definitely will effect
6 the ability to monitor. We're cutting about \$7 million worth of
7 contracts. We're not cutting any monitoring staff. We've
8 actually made -- we have made it a high priority to keep the
9 staff we have that work with citizen monitoring groups to
10 coordinate and train and help all the different watershed groups
11 up and down the state do their job and provide us more data.
12 So, we've increased that program and have a very aggressive
13 citizen monitoring group.

14 But I cannot say it won't affect it. Just like
15 any agency with the budget cuts, it will affect to some extent
16 the amount of monitoring.

17 CHAIRMAN BURTON: What kind of actions do you
18 contemplate to better regulate ag discharge in the water?

19 MR. BAGGETT: Currently the State Board has
20 authorized cleanup and abatement funds to sign a contract
21 between the Central Valley Regional Board and the University of
22 California at Davis to do a three-year monitoring program,
23 which is necessary to determine what pollutants are coming from
24 where in the watersheds, and it will slowly move up the
25 watershed each year for those three years. So, that's in place.

26 We've identified funding to do the CEQA process
27 for agricultural drainage issues in the Central Valley.

28 I've got to be a little careful because the

1 Central Valley Board adopted what's called a conditional waiver
2 two months ago. That petitioned our board in a
3 quasi-judicial --

4 CHAIRMAN BURTON: How many members? They've got
5 nine?

6 MR. BAGGETT: Yeah, they're a full-speed board in
7 the Central Valley. I think they might have eight. They just
8 had one resign, so they're eight.

9 So at this point --

10 CHAIRMAN BURTON: Somebody's appealing something.

11 MR. BAGGETT: They've appealed, both the
12 environmental community as well as the agricultural community
13 both petitioned the regional board's action. But the regional
14 board, on their own motion, took it back and either today or
15 tomorrow morning we're releasing a second draft
16 permit/conditional waiver, replacing the first one they did
17 earlier in the year. That will be petitioned to us.

18 CHAIRMAN BURTON: One would almost think that if
19 both sides didn't like it, it might have been half.

20 The fees that were in AB 10X, how much of your
21 cut did they make up?

22 MR. BAGGETT: Last year, as you're aware, the
23 Legislature gave us the ability to double our fees. That took
24 care of half of it. This year we'll come up with the other 14.9
25 million, so the full \$28 million permitting program will be
26 funded by fees after that's implemented. As you're aware, we
27 can't implement those fees until 90 days after the close of
28 Special Session, and our budget cuts are effective July 1st.

1 CHAIRMAN BURTON: At the present time are you
2 aware of any programs that either we have or that the feds have
3 that could provide, and especially small farmers, into the ag
4 community some kind of long-term low interest loans that would
5 allow them to take care of their environmental problems.

6 MR. BAGGETT: Right. There's a number of
7 programs. The one, there's the EQUIP program, the federal,
8 through the U.S. Department of Agriculture. California shares
9 hundreds of millions. And we've been working closely with
10 resource conservation districts and the ag advisers who are
11 going to be working with that program. And our executive
12 officer, Celeste Cantu, ran the USDA program in the State of
13 California for the Clinton administration and knows a lot of the
14 federal side and how that process works. So, she has been
15 working very closely at our direction with the federal money.

16 At the state level, we do have some funds, and we
17 can actually use some state revolving funds for certain types of
18 nonpoint source pollutant programs, which ag could possibly
19 apply for.

20 We also have 319 grants. For example, two years
21 ago, we gave -- those are revolving fund low interest loans to a
22 group of dairy farmers in Glenn County that oversaw the mini
23 grants. We gave them a master amount of money, a few hundred
24 thousand dollars.

25 CHAIRMAN BURTON: Why would they not apply for
26 them if the alternative is, one, possibly having their
27 operations shut down; two, it's very difficult, especially
28 smaller dairy farm operations and others, to go to the bank and

1 get money because this stuff doesn't return any, it's not a
2 profit-making deal.

3 A lot of red tape? You would think they would
4 want to apply.

5 MR. BAGGETT: Yeah, and we're encouraging them to
6 apply for the loans that are available, and to try to get
7 information, working with the Farm Bureau and the farm advisers.

8 CHAIRMAN BURTON: How is the clean beach money
9 being spent?

10 MR. BAGGETT: We've managed to get -- I don't
11 have the numbers off the top of my head. I think we've got 40
12 or 50 million -- I can get you the exact numbers -- all ready
13 out. Those projects -- and our priorities were projects that
14 have a short-term effect on improving water quality. It works
15 through our regional boards' on-the-ground permitting teams.
16 They prioritize the projects with the cities and counties and
17 dischargers.

18 We've streamlined also in the last six months,
19 we've taken what traditionally was three separate grant programs
20 in the State Board bureaucracy that evolved over the years. We
21 merged them all into one program, and it's based on a watershed
22 approach. So, if you're in a particular watershed, and you need
23 to find out about a loan, you don't have to know whether it's
24 Prop. 13, Prop. 40, Prop. 50, or Prop. 204, or wherever it came
25 from. You just call up the State Board staff who's dealing with
26 that particular watershed you're in, and they'll help you find
27 the monies that you can access. That's all within the last few
28 months that we've been putting that together.

1 CHAIRMAN BURTON: Senator Johnson.

2 SENATOR JOHNSON: No questions.

3 CHAIRMAN BURTON: Senator Romero.

4 SENATOR ROMERO: Thank you.

5 I Chair the Senate Select Committee on Urban
6 Landfills. Recently we had a hearing in Los Angeles. We
7 appreciate the work that the State Water Board did do in
8 providing us the preliminary information. We appreciated
9 getting the information. We were, of course, quite disturbed by
10 the findings that were contained therein.

11 My understanding is that the board is planning to
12 do additional sampling of landfills, having found that 22 of the
13 50 landfills sampled had very high levels of a leachate.

14 I'm curious as to what is the additional sampling
15 that the water board is planning at this time? And can you give
16 us an update on where we are in doing that?

17 MR. BAGGETT: Where we are, in our April 30th
18 agenda this month, we have a potential action item. It should
19 go out and hire a contract with Lawrence Livermore immediately
20 unless -- we've been working with the Sierra Club and with a
21 number of other stakeholder groups to look at other possible
22 scientific organizations. That would require an RFP. It would
23 take months for us to contract, but we were willing to do
24 whichever gets us the best result.

25 The result of that study would be to go out, and
26 as I understand -- I'm not a nuclear physicist by training --
27 but we were looking at the gross beta particles and there's nine
28 different types. And you have to classify which ones and where

1 they're coming from, and that's the research we have to do
2 now.

3 We have the money in place through proposition.
4 We can do the contract, get those results, and really find out
5 what background, which particles are the problem and continue
6 forward with the process.

7 SENATOR ROMERO: So, this would be an April 30th
8 meeting?

9 MR. BAGGETT: This month's board meeting, yes.

10 SENATOR ROMERO: But you don't expect that we'll
11 actually get started until some months.

12 When can we expect the first data coming back?

13 MR. BAGGETT: I can get back to you on that exact
14 date, unless my colleague, Gary Carlton, might know.

15 SENATOR ROMERO: We talked about the budget cuts,
16 but you feel you have sufficient funds to continue what I
17 consider to be very important tests that must be undertaken.

18 MR. BAGGETT: Right. And the groundwater
19 program, thanks to the citizens of the state and Proposition 50,
20 you know, we have \$50 million just in groundwater monitoring.

21 I think the good news, if there is good news in
22 some of these groundwater contamination issues, we do have
23 geotracker, which is an incredible program which the board
24 developed over the years, and so we're ahead of the curve a
25 little bit. I mean, we can at least now, say, in perchlorate,
26 we can identify what wells, what kind of contaminants, what
27 level, and get a handle on the problem.

28 When MTBE hit this state a number of -- a few

1 years ago, it took us years just to figure out where the problem
2 was and how big it was. And now we've at least got the
3 monitoring system in place. We can target and identify. We
4 still need a few billion dollars to clean it up, but we at least
5 know the scope and can get our arms around it.

6 SENATOR ROMERO: Thank you.

7 CHAIRMAN BURTON: Senator Knight.

8 SENATOR KNIGHT: No questions.

9 CHAIRMAN BURTON: Senator Karnette.

10 SENATOR KARNETTE: No questions.

11 CHAIRMAN BURTON: Witnesses in support, briefly.

12 MS. SHEEHAN: Good afternoon.

13 CHAIRMAN BURTON: State your name for the record.

14 MS. SHEEHAN: Good afternoon. My name is Linda
15 Sheehan. I'm with The Ocean Conservancy in San Francisco.

16 I am here in strong support. The one thing I'd
17 like to mention in particular is, I've been very impressed
18 working with nine years in front of the Water Board with
19 Mr. Baggett's outreach, and meeting with the environmental
20 community, and seeking out our views, and considering them
21 carefully in his decision making.

22 So, I would urge your support for his
23 reappointment. Thank you.

24 CHAIRMAN BURTON: Thank you very much.

25 MR. LEHMAN: Thank you, Mr. Chairman. Richard
26 Lehman.

27 It's a pleasure to speak briefly for Art today,
28 as I did four years ago. I think the absence of any opposition

1 to Art's reappointment to this is indicative of the job that
2 he's done there. As you know, this is a big, contentious,
3 controversial area where everybody sues everybody at the end of
4 the day anyway, and Art has managed to negotiate through that
5 and make everybody feel that they're part of the process. He's
6 opened it up dramatically.

7 He has also traveled all over the state. You
8 can't tell him something's going on without it actually being
9 accurate because he's liable to go there: the North Coast, the
10 Salton Sea, Mono Lake, wherever, and see it first-hand.

11 Finally, I don't think there's another person
12 probably in any profession who understands the Sierra Nevada
13 range, the great resources of this state, better than Art
14 Baggett, and I think that's a real value, too.

15 Thank you.

16 CHAIRMAN BURTON: Are you speaking for yourself
17 as a private citizen or a representative?

18 MR. LEHMAN: I'm speaking as a private citizen,
19 and Art keeps things apace.

20 CHAIRMAN BURTON: Next.

21 MR. MAGAVERN: Good afternoon. I'm Bill
22 Magavern with Sierra Club California.

23 Pleased to support the confirmation of
24 Mr. Baggett to another term on the Water Board. We supported
25 his initial appointment in 1999 and think that he's shown
26 leadership on the board. The board has made progress cleaning
27 up coastal waters, on improving enforcement, and strengthening
28 the urban storm water program.

1 I want to point to two areas where we hope the
2 board will move more vigorously in the future. One is the area
3 that you, Senator Burton, raised on forestry. We would like to
4 see a renewed management agency agreement with the Department of
5 Forestry that tightens up control of logging operations that are
6 damaging the state's watersheds.

7 And secondly, the area that Senator Romero
8 brought up. Thanks to the Water Board, we now know that many of
9 the state's landfills have shockingly high levels of radiation
10 in them. We think we now need to go forward with moves to keep
11 radioactive waste out of the landfills to protect the waters of
12 this state.

13 Thank you.

14 CHAIRMAN BURTON: Thank you.

15 Next.

16 MS. CARTER: I'm Sheryl Carter, representing the
17 Natural Resources Defense Council.

18 Mr. Baggett has worked well with NRDC and the
19 other diverse stakeholders involved with these issues. We
20 believe that he's dedicated to improving the health of the
21 California's waters, which he's demonstrated, and we urge his
22 confirmation.

23 Thank you.

24 CHAIRMAN BURTON: Thank you.

25 Next.

26 MS. SPIVY-WEBER: Frances Spivy-Weber, Executive
27 Director of the Mono Lake Committee.

28 We strongly support Mr. Baggett in this position.

1 He has -- not only is working on issues for the future, but he
2 makes sure that the Water Board stays committed to its
3 commitments from the past, and Mono Lake is one of those.

4 CHAIRMAN BURTON: Thank you.

5 Next.

6 MS. DOUGLAS: Karen Douglas, Planning and
7 Conservation League.

8 We also strongly support Mr. Baggett's
9 confirmation.

10 CHAIRMAN BURTON: Thank you.

11 Next.

12 MR. HIRSCH: Dan Hirsch, Committee to Bridge the
13 Gap.

14 We're neutral on the appointment.

15 We want to commend one action and express some
16 concern that we hope the Legislature will engage an oversight
17 of.

18 We want to commend the board for doing the
19 radiation monitoring that found that there is a lot of
20 radioactive waste dumping that's been going on in places where
21 it shouldn't, and that these are very, very high levels.

22 I'm concerned, on the other hand, that the
23 moratorium orders issued by the board have huge loopholes in
24 them, so that practice can be continuing. And I'm concerned
25 about the announcement of an intention to study this to see if
26 we can explain it away rather than trying to stop the problem.
27 I'm worried that these studies will just delay us getting our
28 handle on it, because this stuff is really dangerous and can

1 really pose a threat to water.

2 So, there's some very good actions. I think
3 there's some other actions that I hope the Legislature will keep
4 its eye on.

5 Thank you.

6 CHAIRMAN BURTON: Thank you.

7 Any witnesses in opposition?

8 I've got a question on the Salton Sea. The
9 so-called deal that I think either the Governor signed off on,
10 or somebody signed off on, or whatever it was, where it's been
11 proposed with Met and IID in San Diego, and God knows who.

12 What is really in there that is either a
13 commitment or even a strong promise to do something about the
14 Salton Sea problem?

15 MR. BAGGETT: The greatest protection for the
16 Sea, and having not been involved in those negotiations because
17 basically the order, which I held the 40-plus days of hearings
18 on, an 120-page order we issued last fall on the transfer, that
19 order has some fairly strong protections for the Sea.

20 It requires full protection for 15 years, which,
21 as you're probably aware, the federal government thinks it
22 deserves no protection.

23 Our order will require, if they are going to
24 transfer that water, they have to mitigate for air pollution,
25 they have to mitigate for socioeconomic impacts, they have to
26 mitigate for water, make-up water to the Sea. And that's all in
27 our order, and I'd be glad to --

28 CHAIRMAN BURTON: The deal does not undermine or

1 circumvent that.

2 MR. BAGGETT: No. Our order -- they might have
3 to come back and ask for a couple amendments.

4 CHAIRMAN BURTON: Waivers.

5 I thought that Mary Bono did something, had some
6 bill dealing with the Salton Sea?

7 MR. BAGGETT: There's some federal money, I
8 think, for studies to try to identify the problem.

9 But our order actually requires mitigation for a
10 number of endangered species issues and so on.

11 CHAIRMAN BURTON: Senator Romero.

12 SENATOR ROMERO: Could you please respond to the
13 comments and concerns raised by Dan Hirsch from the Committee to
14 Bridge the Gap as to the timeline? And as we go forward with
15 the sampling, what will the efforts be to assure us that you
16 won't be here to explain away?

17 MR. BAGGETT: Right, right.

18 No, I think our intent is to identify with
19 certainty exactly where the problem is, and what constituents
20 are causing it.

21 Like I said, what I think is safe in speculating
22 the timeline, I'm not prepared to do that. I'm a water rights
23 attorney by backgrounds.

24 I'd be glad to provide that, or get with your
25 staff and give you the exact timeline information. We'll take
26 care of that this afternoon.

27 SENATOR ROMERO: I'd very much like that, and the
28 scope as well.

1 MR. BAGGETT: Right, we'll be glad to do that.

2 CHAIRMAN BURTON: Move the nomination. Call the
3 roll.

4 SECRETARY WEBB: Senator Karnette.

5 SENATOR KARNETTE: Aye.

6 SECRETARY WEBB: Karnette Aye. Senator Knight.

7 SENATOR KNIGHT: Aye.

8 SECRETARY WEBB: Knight Aye. Senator Romero.

9 SENATOR ROMERO: Aye.

10 SECRETARY WEBB: Romero Aye. Senator Johnson.

11 SENATOR JOHNSON: Aye.

12 SECRETARY WEBB: Johnson Aye. Senator Burton.

13 CHAIRMAN BURTON: Aye.

14 SECRETARY WEBB: Burton Aye. Five to zero.

15 CHAIRMAN BURTON: Congratulations.

16 MR. BAGGETT: Thank you.

17 CHAIRMAN BURTON: Gary Carlton, member of the
18 State Water Resources Board.

19 In your opening remarks, respond to some of the
20 questions that Mr. Baggett had to answer to save us some time.

21 MR. CARLTON: Okay.

22 Good afternoon, Mr. Chairman, Members of the
23 Rules Committee. I thank you for opportunity to appear before
24 you today.

25 CHAIRMAN BURTON: That will be in lieu of your
26 prepared remarks.

27 MR. CARLTON: Okay.

28 CHAIRMAN BURTON: As opposed to in addition to.

1 MR. CARLTON: Okay.

2 In regards to the questions on the timing of
3 conducting the additional monitoring.

4 CHAIRMAN BURTON: That, I think the timber
5 harvest stuff, which is your bailiwick, more or less, at least
6 in the North Coast.

7 MR. CARLTON: Okay.

8 On the low level radiation monitoring, as
9 Mr. Baggett indicated, due to the fact the State Board has an
10 existing contract with Lawrence Livermore, and we've identified
11 funding, we could, and have on our agenda on April 30th, an
12 authorization for the Executive Director to forward with
13 executing a contract to conduct that additional monitoring.

14 If we go forward with that authorization, I would
15 estimate, although I haven't discussed this with staff, but on
16 my own technical experience, I would think that in three months
17 time, we could identify the necessary sampling points, analyze
18 -- I know that the work plan calls looking at the data already
19 collected, analyze that, to give us some insight, come up with a
20 new sampling plan, conduct the sampling, and get the results.
21 And I would say three months is a reasonable time period.

22 Because there has been some concern expressed by
23 certain stakeholders about the appropriateness of using the
24 Lawrence Livermore Laboratory, we are re-evaluating that. I'm
25 sure that will be discussed at our board meeting on the 30th.
26 If a decision were made to go with another laboratory, that
27 would require an RFP process that I guess would take six to nine
28 months to complete, and then add the three months to work, so we

1 could be talking about a year for the results.

2 And that's my guesstimate on that issue.

3 CHAIRMAN BURTON: You're the board member
4 responsible for overseeing the North Coast Regional Board.

5 What do you do in that role

6 Then secondly, do you believe that the regional
7 water boards should have a stronger role with the Forestry in
8 approving the timber harvest plans, especially as they affect
9 the water?

10 MR. CARLTON: The first question, what do I do as
11 my liaison duties with the North Coast Region, I attend their
12 board meetings on a regular basis. I am, in fact, the liaison
13 for Regions 1, 2 and 3. They sometimes have overlapping
14 schedules, so I can't say that I make every meeting, but I make
15 a majority of their meetings.

16 Board members normally hold a dinner the evening
17 before, since they're visiting from out of town. I attend those
18 dinners. It gives me an opportunity to interact with board
19 members and general discussions of the issues that are pending.

20 I act in an advisory capacity if board members
21 wish to contact me and discuss policy level issues. I'm very
22 active in that regard.

23 I believe that since I have been on the board and
24 become liaison, and the regular interaction with the board
25 members, the focus of that board has become much more directed,
26 and that they are addressing the issues relative to increased
27 sedimentation from logging activities in a very workman-like
28 manner. And I think they're taking their responsibilities very

1 seriously. They have a very active management of their staff
2 through the board meeting activities. They give very clear
3 direction.

4 We at the State Board, on my motion, have
5 reinforced to that board the importance of their complying with
6 our remand to them and directive to address these five problem
7 creeks in a very timely manner. They provide us with regular
8 status reports. I think they're making good progress there
9 also. So, I think there is progress.

10 I believe your other question was related to my
11 feeling about the role of the regional board in dealing with
12 sedimentation issues vis-a-vis the roles and authorities or the
13 Department of Forestry. I feel very strongly. Without
14 question, it is the ultimate responsibility of the regional
15 boards and the State Board to ensure that the water quality's
16 being protected, and that the beneficial uses that are laid out
17 in the basin plans are being protected.

18 We would like to work cooperatively with CDF to
19 do that, because there are efficiencies if we can work together,
20 and that we're not countermanaging each other.

21 But on the other hand, if the regional boards
22 continue to encounter situations where they feel that the
23 actions of the CDF are not sufficiently protective, then I
24 support fully the authority of the regional boards to act on
25 their own behalf to issue waste discharge requirements,
26 monitoring orders, cleanup and abatement orders wherever it's
27 necessary.

28 CHAIRMAN BURTON: Do you have that authority

1 under existing law?

2 MR. CARLTON: Yes, we believe we do,

3 Mr. Chairman.

4 CHAIRMAN BURTON: Senator Johnson.

5 SENATOR JOHNSON: No questions.

6 CHAIRMAN BURTON: Senator Romero.

7 SENATOR ROMERO: I don't have any new questions.

8 You've heard the questions that I posed before, and I probably
9 myself will be monitoring that April 30th hearing as well.

10 But my hope would be that we can expedite this.

11 I commend the board for having had the insight to go ahead and
12 conduct this survey from the beginning. And my hope would be
13 that we can have a thorough study, but one that certainly could
14 be expedited. A year seems a bit long for people of California,
15 people worrying about radioactive contamination in groundwater
16 supplies.

17 MR. CARLTON: We at the State Board certainly
18 consider it a very serious issue, and we want to act as promptly
19 as possible.

20 Perhaps in the discussions that occur in our
21 hearing on this matter, those who have concerns with the
22 Lawrence Livermore could express those. Perhaps some oversight
23 arrangement can be worked out so that there's assurances of the
24 objectivity activity of the work and no delay. We'll certainly
25 work towards set up as soon as possible.

26 CHAIRMAN BURTON: Senator Knight.

27 SENATOR KNIGHT: No questions.

28 CHAIRMAN BURTON: Senator Karnette.

1 SENATOR KARNETTE: No questions.

2 CHAIRMAN BURTON: Witnesses in support?

3 Witnesses in opposition?

4 Do you have any family here?

5 MR. CARLTON: Yes, my wife is here, Mary Lynn
6 Carlton. I'd like to introduce her.

7 CHAIRMAN BURTON: Move the nomination.

8 SECRETARY WEBB: Senator Karnette.

9 SENATOR KARNETTE: Aye.

10 SECRETARY WEBB: Karnette Aye. Senator Knight.

11 SENATOR KNIGHT: Aye.

12 SECRETARY WEBB: Knight Aye. Senator Romero.

13 SENATOR ROMERO: Aye.

14 SECRETARY WEBB: Romero Aye. Senator Johnson.

15 SENATOR JOHNSON: Aye.

16 SECRETARY WEBB: Johnson Aye. Senator Burton.

17 CHAIRMAN BURTON: Aye.

18 SECRETARY WEBB: Burton Aye. Five to zero.

19 CHAIRMAN BURTON: Congratulations.

20 MR. CARLTON: Thank you very much.

21 CHAIRMAN BURTON: Ms. Kennedy.

22 MS. KENNEDY: Thank you. It's an honor to be
23 here.

24 My appointment to the Public Utilities Commission
25 comes at a crucial time in California's history. People like to
26 say that the energy crisis is behind us, but as Senator Dunn
27 said to me yesterday, we're actually in the eye of the storm,
28 and I agree with that. We have a lot of very important

1 decisions to make.

2 I worked very closely with many of you over the
3 last four years in my position in the Governor's office on every
4 issue from the energy crisis to HMO reform to education. That
5 was one of the most valuable experiences of my life.

6 I believe very strongly that even though a
7 commission like the PUC is an independent body, we're not
8 cowboys. We can't been cowboys, especially when it comes to
9 charting our future after what we've experienced. And I believe
10 very strongly that we must have a strong working relationship
11 with the Legislature. It's our job to carry out the laws that
12 this body sets.

13 I know that my first responsibility is to protect
14 the ratepayers, especially as we climb out of the crater that
15 has been left by our experience over the last few years.

16 It's been an honor working with each of you over
17 the past four years, and I look forward to the challenges ahead.

18 CHAIRMAN BURTON: Senator Johnson.

19 SENATOR JOHNSON: No questions, Mr. Chairman.

20 CHAIRMAN BURTON: Senator Romero.

21 SENATOR ROMERO: No questions.

22 CHAIRMAN BURTON: Senator Knight.

23 SENATOR KNIGHT: I was curious. According to
24 your 700, you took a trip to Cuba to talk about agricultural
25 matters in Cuba?

26 MS. KENNEDY: Yes. It was actually quite a bit
27 of -- the United States is permitted by federal law to trade in
28 agricultural products and pharmaceutical products, and there are

1 many other states that are -- that have made many trips to Cuba
2 to sell rice. I can't remember what the other major products
3 are at this point in time. But California, being the largest
4 agricultural producer, is giving up on what is an essential
5 market that's right off our shores.

6 SENATOR KNIGHT: Do we export to Cuba our
7 agricultural products?

8 MS. KENNEDY: I don't believe so. If we do, it's
9 in very minor amounts.

10 Some of the products they need, like milk
11 products, are -- California's not in the best position to trade
12 with those. But I'm no expert on this.

13 But it was a fascinating trip.

14 CHAIRMAN BURTON: Senator Karnette.

15 SENATOR KARNETTE: I've known you a long time,
16 Susan, and I'm glad you're still here.

17 MS. KENNEDY: Thank you.

18 SENATOR KARNETTE: I have one question, though.

19 What's your view of the exit fee structure that's
20 been adopted by the CPUC? We hear about that a lot.

21 MS. KENNEDY: The direct access structure, I'm
22 not intimately familiar yet with exactly how they came up with
23 that, and where all the numbers flow.

24 But my impression is that it does not satisfy the
25 current collection in order to retire that debt either in 2003,
26 or certainly over a reasonable period of time. In some cases it
27 wouldn't repay the bundled ratepayers until 10 or 20 years, and
I think that's an undue burden. I think that's ridiculous, and

1 it should be -- the bundled ratepayers should be paid back much
2 faster than that.

3 SENATOR KARNETTE: Thank you.

4 CHAIRMAN BURTON: So, they're going to take new
5 action?

6 MS. KENNEDY: There are workshops being conducted
7 as we speak, and I understand that there should be a new
8 proceeding by July.

9 CHAIRMAN BURTON: The mysterious Office of
10 Economic Development, I know this came out of the Governor not
11 out of the commission, but we're trying to check whether or not
12 that would take legislative authorization.

13 How do you see that thing working?

14 MS. KENNEDY: I wasn't part of the team that
15 developed that. My best perspective is that of a commissioner
16 now.

17 I would find it very helpful to have an office
18 within the Public Utilities Commission where you could go to get
19 independent information about what the economic impact is of
20 certain regulations or proceedings that are before us, instead
21 of relying on either the companies or the advocates for that.
22 It's useful, but it would be helpful to have an office where you
23 could get that information.

24 There's one example that I can think of, a type
25 of regulation that could be looked at by such an office. Ten
26 years ago the PUC had a regulation that prevented the incumbent
27 phone companies from investing in fiber optics, and it was in
28 the name of competition. That clearly, given where we were

1 going with the industry, prevented a lot of economic investment
2 at the time. Now, we reversed that. The PUC reversed that
3 about five years ago.

4 That's the type of regulation that could be
5 looked at by this office. It would be very helpful as a
6 commissioner.

7 CHAIRMAN BURTON: On applying the DWR bonds
8 charge to the 130 percent baseline, I think the majority of the
9 commission voted to apply that, that a lot of us thought was in
10 contravention to the theory of the 130 percent baseline.

11 Do you know what the thinking of the majority of
12 commission was, or at least what your thinking was?

13 MS. KENNEDY: I think I was the one who made it a
14 majority; it was a three-two.

15 CHAIRMAN BURTON: What was your thinking?

16 MS. KENNEDY: My understanding when -- I was here
17 when we drafted the legislation on the 130 percent. So, I
18 understood -- I mentioned it that morning. It was my second
19 commission meeting, and I said, we're supposed to protect the
20 130 percent and below.

21 I was assured by energy -- I was prepared to vote
22 against that that morning, to reverse the commission's policy.
23 I was assured by Energy Division staff that the rates of the
24 electricity bill for the 130 percent of baseline would not go
25 up, not even a mil.

26 CHAIRMAN BURTON: Right, but for that, they could
27 have gone down.

28 MS. KENNEDY: Theoretically, but it wouldn't

1 automatically go down.

2 CHAIRMAN BURTON: We're putting them on. We
3 aren't raising the rate, but we, the commission, was applying
4 the bond charge to them.

5 MS. KENNEDY: Theoretically you're right. I mean,
6 over the course of time that would make it more difficult as we
7 begin to do refunds.

8 But I still saw that as consistent with we don't
9 raise the rates, and we're trying to spread the burden of the
10 DWR bond charges in a way that didn't -- you know, that was
11 fair. And I didn't think it impacted them at all under that.

12 CHAIRMAN BURTON: I think the level of impact
13 would be something.

14 Now, I don't know whether you know this or not,
15 because I don't know your process, but in your response to us,
16 you mentioned that the commission denied a rehearing on that.

17 MS. KENNEDY: That's correct.

18 CHAIRMAN BURTON: Yet Chairman Peevey before us
19 said that they would revisit the issue.

20 Were you able to, if a rehearing is denied --

21 MS. KENNEDY: It's my understanding that any
22 commissioner can move for a rehearing. That's my understanding.

23 CHAIRMAN BURTON: Okay.

24 You commented to Senator Karnette on the direct
25 access and its impact on the bundled ratepayers.

26 Does that mean there may be a revisiting of that
27 charge or what?

28 MS. KENNEDY: Yes. It's happening now, and it'll

1 be done, I think, by July.

2 CHAIRMAN BURTON: As we speak.

3 In the letters also you said when you became
4 knowledgeable about the energy problem, and I remember how you
5 swore up and down you wouldn't get involved in it --

6 MS. KENNEDY: This is my penance for that.

7 CHAIRMAN BURTON: Exactly.

8 But when you did get involved in it, you said it
9 gave you a sense that the flaws in the plan or implementation of
10 the dereg, what do you think the flaws, in your mind, were
11 either in, I guess, the plan itself or, I guess, in the
12 implementation?

13 MS. KENNEDY: Well, first of all, there's lot of
14 them, so the top ones that come to mind are, we only deregulated
15 half of the equation by capping. By not capping any of the
16 costs, and keeping capped their ability to recover the cost, you
17 allowed costs to skyrocket with no ability to recover. We sent
18 them into bankruptcy.

19 We forced the utilities to sell off their
20 generation assets without any benchmarks to ensure that new
21 supply was going to be coming on line.

22 We had little powers to police the market in
23 terms of, we had 30 percent of our native generation was off
24 line -- not native generation, but 30 percent of the merchant
25 generators were off line during the crisis which helped to
26 create a supply problem. We had no power to go in and see
27 whether or not they were off line for real reasons or somebody
28 kicked the plug out.

1 And we were totally dependent upon the FERC.

2 We also had no rules against arbitraging the
3 market with direct access, so customers can come in and out of
4 direct access markets without -- you know, they just go back to
5 bundled service, and that's how the bundled customers got left
6 holding the bag.

7 CHAIRMAN BURTON: Do you have any family with you
8 today?

9 MS. KENNEDY: Only in spirit.

10 CHAIRMAN BURTON: Witnesses in support, briefly.

11 MR. WETCH: Mr. Chairman, Scott Wetch on behalf
12 of the Coalition of Utility Employees.

13 We in organized labor are confident that
14 Commissioner Kennedy will be -- play an important role in
15 returning reliability and stability to the state's electric
16 system and correcting many of the dysfunctional elements of
17 deregulation.

18 We strongly support her confirmation.

19 CHAIRMAN BURTON: Next.

20 MS. BERRIO: Good afternoon, Committee Chair and
21 Committee Members. Itzel Berrio with the Greenlining
22 Institute.

23 The Greenlining Institute and its 39 multi-ethnic
24 church, civil rights, business and community organizations wish
25 to make three points regarding the appointment of Susan Kennedy
26 to the Public Utilities Commission.

27 First, we support Commissioner Kennedy as the
28 86th Commissioner of CPUC because we believe she is highly

1 qualified, and because we believe she is committed to protecting
2 the needs of the poor, new immigrants, limited English speakers,
3 senior citizens, and the new majority.

4 Second, we are gravely concerned that all the
5 Governor has continued to make to the CPUC are appointments that
6 are all white. The CPUC is, in essence, becoming an all-white
7 preserve. All six of his appointments to the commission have
8 been white, and this is especially disturbing since the CPUC is
9 the most powerful regulatory body in the State of California.
10 Never in its 92-year history has it had a Latino or Asian-
11 American commissioner.

12 Parenthetically, we would like to advise you that
13 less than nine percent of the CPUC is Latino, and Latinos
14 disproportionately serve in non-influential positions at the
15 commission. We therefore urge that if you choose to confirm
16 Commissioner Kennedy today, as we do hope you do, you also send
17 a message to the Governor that members of the new majority
18 should be represented at the commission.

19 And third, we are concerned that Commissioner
20 Kennedy and the other commissioners lack the resources necessary
21 to ensure that they can protect the needs of non-English
22 speakers, new immigrants, the poor, and the new majority. As
23 things stand now, it appears more difficult for a non-English
24 speaking immigrant to effectively register a complaint with the
25 CPUC than for a camel to pass through the eye of a needle.

26 Thus, Commissioner Kennedy, recently confirmed
27 President Michael Peevey, and the other Davis CPUC appointees
28 should submit a plan to the Governor and to this body on

1 effectively increasing its resources to serve all ratepayers,
2 and to ensure greater and more effective scrutiny of
3 increasingly unregulated utilities that focus solely on the
4 bottom line of corporate profits, and ignore the other bottom
5 line, that of corporate responsibility.

6 In conclusion, we support Commissioner Kennedy's
7 confirmation, yet we have concerns that sometimes commissioners
8 appear committed to the poor before their confirmation hearings,
9 and then their resolve seems to substantially diminish once
10 confirmed.

11 We are hopeful, however, that in this case we
12 will not be disappointed.

13 Thank you very much.

14 CHAIRMAN BURTON: Thank you.

15 Next.

16 SENATOR ROMERO: Senator Burton, can I just
17 comment again?

18 I'd like to thank the witness for having made the
19 presentation. Very powerful, I think a very strong message to
20 this committee.

21 I'll let you know that on my end, and again, I
22 believe that Ms. Kennedy is eminently qualified. I may disagree
23 with her on some issues, especially pertaining to low level
24 radioactive waste, but that's a subsequent discussion, and I
25 hope to change her mind on that.

26 But I just wanted to let you know that on my end,
27 I've sent a letter to the Governor. I've met with Mr. Yamaki.
28 I've met with the distinguished gentleman in the front row,

1 Mr. Bill Lloyd, just this past week to talk about the need for
2 us to have diversity, and the talent that you know and I know,
3 and I think we all know, is out there; is out there.

4 So, I applaud your message. I know on my end, I
5 have made numerous efforts to convey this over and over.

6 Perhaps after this, I'd like to invite you to sit
7 down with me and let's figure out a strategy.

8 MS. BERRIO: I would love that.

9 SENATOR ROMERO: Thank you.

10 MS. BERRIO: Thank you, Senator Romero.

11 MR. PHILLIPS: Good afternoon. My name is Mister
12 Phillips, and I am of the Greenlining Institute also.

13 I'm here to read a statement on behalf of Mary
14 Ann Mitchell, who is a Board Member on the Greenlining
15 Institute, and also the Chair of the National Black Business
16 Council.

17 "The National Black
18 Business Council and its members
19 have a high interest in
20 California Public Utilities
21 Commission issues. Runaway
22 energy prices have a
23 disproportionately adverse impact
24 on small businesses and consumer
25 fraud, such as slamming and
26 cramming has a very negative
27 impact on small businesses.
28 We are also concerned about issues

of diversity, technical assistance, and receiving a fair share of the five billion dollars a year in utility contracts awarded to California firms.

"In each of these areas, the PUC in the past has been deficient. And in each of these areas the PUC has often ignored our concerns. We, however, support Susan Kennedy's nomination as a Commissioner. We do so because we believe she is strongly committed to our issues and has the skill and the will to protect the interests of African Americans, other minorities, and small business interests against giant utilities that often spend hundreds of millions of dollars a year to promote their interests, often at our peril."

Thank you very much.

CHAIRMAN BURTON: Thank you, sir.

Next.

MR. GORDON: Mr. Chairman, Senators, Jim Gordon.
ent to the International Vice President of the
Workers of America, District Nine.

1 We are very proud to support Susan Kennedy's
2 appointment to the PUC, hope you confirm her. Our organization,
3 our labor union, and our members and myself have known Susan for
4 probably close to 15 years, both inside and outside of
5 government.

6 We have not always agreed on every issue, but we
7 have a thousand percent batting average on getting her to listen
8 to our issues and have a dialogue, and that is one of the most
9 important things, we think, that a commissioner can have. We
10 don't have that with all the commissioners.

11 So, we strongly urge your confirmation. Thank
12 you.

13 CHAIRMAN BURTON: She always listens to me. We
14 have a dialogue, but she never agrees with anything I tell her.

15 [Laughter.]

16 MS. CARTER: Good afternoon once again. I'm
17 Sheryl Carter with the Natural Resources Defense Council.

18 We have worked with Susan Kennedy in her last
19 couple of posts and look forward to working with her and in a
20 productive way in her new post.

21 I just want to say that she was personally
22 involved in developing and ensuring the implementation of what
23 we considered to be the most successful energy conservation
24 statewide campaign ever, and she was also instrumental in
25 establishing the renewable portfolio standards here in
26 California.

27 We believe she's more than qualified for this
28 position, and we urge her confirmation. Thank you.

1 CHAIRMAN BURTON: Thank you.

2 Next.

3 MR. HERNANDEZ: Ignacio Hernandez on behalf of
4 the Consumer Federation of California.

5 In our dealings with Ms. Kennedy, we have found
6 her to be unparalleled in her intelligence, insight, and
7 open-mindedness, agree or disagree on issues, and we look
8 forward to her being confirmed to the PUC and look forward to
9 working with her in the future.

0 MR. BROAD: Barry Broad on behalf of the
1 Teamsters, the Machinists, and the United Food and Commercial
2 Workers in strong support for this confirmation.

3 Thank you.

4 MR. WHITE: Mr. Chairman and Members, John White
5 representing the Center for Energy Efficiency and Renewable
6 Technologies.

7 We are here to support Susan Kennedy's nomination
8 for commissioner. We believe that she is a good person to have
9 at this time, given her knowledge and experience both in state
20 government, and she's a veteran of the crisis that we faced. I
21 think the lessons that we learned in part in that crisis
22 included the importance of energy efficiency. We're happy to
23 see that she's taken a leadership role on that issue at the
24 commission.

25 Also, we're hopeful that the commission, as we
26 move forward to whatever changes are coming, will help us keep
27 the utilities accountable to their customers because ultimately
28 the commissioner is the only one standing between the people of

1 the State of California and the utilities. We need them to be
2 independent and strong, and keep them accountable, even as we,
3 at the same time, try to figure out how to navigate what is
4 still a difficult and uncertain environment.

5 But we're looking forward to working with her.
6 She's accessible; she's smart; she's working hard; she's reading
7 a lot of stuff. And we're counting on her -- she's reading
8 stuff, which is a good thing in a commissioner, to read the
9 stuff. And that's an important part of why we're hopeful that
10 as we go forward, and the problems are difficult, and the issues
11 we disagree on, that she's going to be there, both to hear us
12 and also to pay careful attention to what all the evidence is on
13 the record.

14 So, we're glad to support her confirmation.

15 Thank you.

16 CHAIRMAN BURTON: Thank you.

17 Next.

18 MR. FLORIO: Thank you, Mr. Chairman, Members of
19 the Committee. Mike Florio, Senior Attorney for TURN.

20 Since we spend so much of our time in front of
21 the commission, we don't typically take positions pro or con,
22 but I think I can say, based on just three months on the job,
23 that we're extremely impressed with Commissioner Kennedy's
24 smarts and ability to get to the heart of the issue really
25 quickly.

26 We haven't always agreed, but we've always been
27 able to talk through the issues in a constructive way. We look
28 forward to six long years of working together.

1 MS. KENNEDY: Six? Six years?

2 [Laughter.]

3 CHAIRMAN BURTON: Six lo-o-o-ong years.

4 [Laughter.]

5 MS. KENNEDY: And no parole.

6 CHAIRMAN BURTON: Not with this Governor.

7 [Laughter.]

8 CHAIRMAN BURTON: Any witnesses in opposition?

9 Move the nomination.

0 SECRETARY WEBB: Senator Karnette.

1 SENATOR KARNETTE: Aye.

2 SECRETARY WEBB: Karnette Aye. Senator Knight.

3 SENATOR KNIGHT: Aye.

4 SECRETARY WEBB: Knight Aye. Senator Romero.

5 SENATOR ROMERO: Aye.

6 SECRETARY WEBB: Romero Aye. Senator Johnson.

7 SENATOR JOHNSON: Aye.

8 SECRETARY WEBB: Johnson Aye. Senator Burton.

9 CHAIRMAN BURTON: Aye.

20 SECRETARY WEBB: Burton Aye. Five to zero.

21 CHAIRMAN BURTON: Congratulations, Susan.

22 MS. KENNEDY: Thank you.

23 [Thereupon this portion of the

24 Senate Rules Committee hearing

25 was terminated at approximately

26 2:40 P.M.]

27 --ooOoo--
28

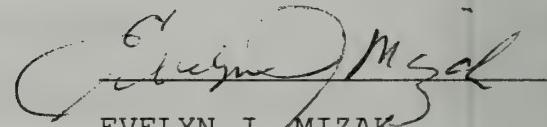
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5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Rules Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 11th day of April, 2003.

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18 EVELYN J. MIZAK
19 Shorthand Reporter

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1 APPEARANCES

2 MEMBERS PRESENT

3 SENATOR JOHN BURTON, Chair

4 SENATOR ROSS JOHNSON, Vice Chair

5 SENATOR WILLIAM KNIGHT

6 SENATOR GLORIA ROMERO

7 MEMBERS ABSENT

8 SENATOR BETTY KARNETTE

9 STAFF PRESENT

10 GREG SCHMIDT, Executive Officer

11 PAT WEBB, Committee Secretary

12 NETTIE SABELHAUS, Consultant on Governor's Appointments

13 SUSIE SWATT, Consultant to SENATOR JOHNSON

14 TIM SHELLEY, Consultant to SENATOR KARNETTE

15 CHRIS BURNS, Consultant to SENATOR KNIGHT

16 CARY RUDMAN, Consultant to SENATOR ROMERO

17 ALSO PRESENT

18 ROBERT H. HATTOY, Member
19 Fish and Game Commission

20 JIM METROPOLOS
21 Sierra Club

22 VIRGINIA HANDLEY
23 Fund for Animals

24 KENNETH L. RISEN, Member
25 Board of Prison Terms

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
ROBERT K. HATTOY, Member Fish and Game Commission	1
Background and Experience	1
Questions by SENATOR KNIGHT re:	
Hunting	2
Questions by CHAIRMAN BURTON re:	
Tenure on Commission	2
Status of Recovery Plan for Coho Salmon	2
Budget Cuts and Department's Ability to Fulfill Responsibilities	3
<u>Witnesses in Support:</u>	
JIM METROPOLOS Sierra Club	4
VIRGINIA HANDLEY Fund for Animals	5
Motion to Confirm	5
Committee Action	5
KENNETH L. RISEN, Member Board of Prison Terms	6
Background and Experience	6
Questions by SENATOR JOHNSON re:	
Status of Backlog	8
Differences with Inspector General's Report	8

1 Questions by SENATOR ROMERO re:

2 Possible Reforms in Areas of Parole and
3 Recidivism 9

4 Evaluation of Risk 10

5 Questions by CHAIRMAN BURTON re:

6 Early Release 10

7 Example of Technical Violation 11

8 Theory on Parole Revocations 12

9 Use of Video Conferencing for
10 Parole Hearings 14

11 Motion to Confirm 15

12 Committee Action 16

13 Termination of Proceedings 17

14 Certificate of Reporter 18

1 P-R-O-C-E-E-D-I-N-G-S

2 --ooOoo--

3 CHAIRMAN BURTON: Governor's appointees
4 appearing today, Robert Hattoy, Fish and Game Commission.

5 MR. HATTOY: Mr. Chairman, Senators, thank you
6 for this opportunity to be here today.

7 I think it's an honor and a privilege to have
8 been nominated by the Governor to serve, if you find fit to
9 confirm me, on the Fish and Game Commission.

10 The issues that the Fish and Game Commission deal
11 with are issues that are really important to me on personal,
12 philosophical, and sort of political level. Since I was a
13 little boy, I would go fishing in Cape Cod with my grandfather,
14 who was part of the fishing community, and my aunt in the
15 Portuguese fishing community in Cape Cod.

16 I have been an outdoors kind of guy from the Boy
17 Scout days in Orange County to my days as a lobbyist for the
18 Sierra Club, and working on the Department of Interior in
19 Washington, D.C. for the eight years during the Clinton
20 administration. I've worked very closely with the issues of
21 conservation and stewardship of resources, and I am just very
22 excited about taking on, and working with, and rolling my
23 sleeves up, and working with all of you on the issues that refer
24 to California's resources.

25 I'm here today to answer any questions and to let
26 you know me a little better. I'd be honored to accept all of
27 your votes and accept all of your questions.

28 That's all I think I need to say for right now.

1 CHAIRMAN BURTON: Senator Johnson.

2 SENATOR JOHNSON: No questions.

3 CHAIRMAN BURTON: Senator Romero.

4 SENATOR ROMERO: No questions.

5 CHAIRMAN BURTON: Senator Knight.

6 SENATOR KNIGHT: How do you feel about hunting?

7 MR. HATTOY: How do I feel about hunting? I
8 think that people in California have a constitutional,
9 historical, legal, and family right to hunt. I'm totally
10 supportive of following the rules and regulations set up by the
11 Commission to allow hunting in California.

12 CHAIRMAN BURTON: How long have you been on the
13 Commission?

14 MR. HATTOY: I was appointed, I think, in August
15 of last year, and then I was filling out someone's term that
16 ended in January.

17 CHAIRMAN BURTON: Do you know what the status of
18 the recovery plan for the coho salmon is?

19 MR. HATTOY: Do I know about it.

20 CHAIRMAN BURTON: Do you know what the status is?

21 MR. HATTOY: The status is that we asked the
22 stakeholders to all get together and come back to us in January
23 to, you know, come up with some kind of working solution because
24 everybody was very, very close to coming up with something.

25 They came back in January and said they needed
26 more time. The Commission gave them more time.

27 I wasn't really supportive of that. I thought we
28 should have locked them in the room and let them all, you know,

1 settle something. But right now, the stakeholders are still all
2 meeting together, and they'll be getting back to us in our May
3 meeting in Riverside. So, that's where it is right now.

4 CHAIRMAN BURTON: The Governor's budget reduces
5 funding in Fish and Game for timber harvest plan review and
6 reduces almost 30 positions for Fish and Game wardens.

7 How is Fish and Game going to fulfill its
8 responsibilities, protect fishery and wildlife resources, with
9 these kind of reductions? People that go in and bag more game
10 than they're supposed to be, and then depleting that and causing
11 problems for legitimate hunters. And, you know, the way the
12 timber can screw the soil and screw the fish, how are they going
13 to do their job?

14 MR. HATTOY: That's a problem. As you know,
15 Mr. Chairman, there's a difference between the Commission and
16 the Department. The Commission regulates and the Department
17 enforces.

18 And they are cutting back on staff, and laying
19 off their friends, and coming up with work plans that are, you
20 know, overworking them.

21 They're going to have to figure out a way,
22 honestly, to do more with less, like many of the state agencies.

23 But some of these crucial programs, like timber
24 harvest plans and other enforcement and regulatory things, I
25 think we're going to have to work with the stakeholders and work
26 with, you know, some of the user groups to, you know, figure out
27 a fee structure, or look at some kind of ways to supplement what
28 the budget concerns are. These are all important regulatory

1 matters.

2 I think the hunters were the first to tell you
3 that they want the laws followed. They don't like the folks
4 that are out there acting against regulations. It makes them
5 all look bad. I think they'll be cooperative in working out
6 ways to figure out, you know, management plans.

7 The timber industry, you know, they're going to
8 have to follow the law, as they know. They'd rather do it up
9 front than in court.

10 So, I think there's ways to work with the
11 industry and work with the groups to come up with ways to
12 supplement the budget.

13 But there is a crisis right now, as you know,
14 with the budget, and it's going to impact resources one way or
15 the other. So, I'll be working with you folks on coming up with
16 ways to solve that.

17 CHAIRMAN BURTON: Is it line item, or does either
18 the Department or the Commission have the ability to shift
19 people around?

20 MR. HATTOY: I don't know. I don't know that.

21 CHAIRMAN BURTON: That's all right.

22 Any witnesses in support? Witnesses in
23 opposition? Support?

24 MR. METROPOLOS: Support.

25 Mr. Chair, Committee Members, my name is Jim
26 Metropoulos. I represent Sierra Club.

27 We are here to strongly support the reappointment
28 of Bob Hattoy to the Fish and Game Commission. We feel his

1 prior experience in environmental and other issues provides him
2 with a good background to handle the diverse issues, such as
3 hunting, take, fisheries, and habitat issues that come before
4 the Fish and Game Commission.

5 We ask that you vote aye to confirm him to a term
6 on the Fish and Game Commission. Thank you.

7 CHAIRMAN BURTON: Witnesses in opposition?

8 MS. HANDLEY: No, support.

9 Virginia Handley, the Fund for Animals.

10 We're in support of Mr. Hattoy's appointment. I
11 go to as many Commission meetings as I can, and it's refreshing
12 to have a commissioner who is active, and speaks up, asks
13 questions, and is interested, and who, I believe, is a real
14 environmentalist. We've been disappointed in a couple of the
15 past appointments to the Commission, very disappointed. And so,
16 we welcome to have a real environmentalist on the Commission.

17 CHAIRMAN BURTON: Witnesses in opposition?

18 Move the nomination.

19 SECRETARY WEBB: Senator Knight.

20 SENATOR KNIGHT: Aye.

21 SECRETARY WEBB: Knight Aye. Senator Romero.

22 SENATOR ROMERO: Aye.

23 SECRETARY WEBB: Romero Aye. Senator Johnson.

24 SENATOR JOHNSON: Aye.

25 SECRETARY WEBB: Johnson Aye. Senator Burton.

26 CHAIRMAN BURTON: Aye.

27 SECRETARY WEBB: Burton Aye. Four to zero.

28 CHAIRMAN BURTON: Congratulations.

1 MR. HATTOY: Thank you, Senators.

2 CHAIRMAN BURTON: Kenneth Risen, Board of Prison
3 Terms.

4 MR. RISEN: Good afternoon.

5 I'm here to ask for a positive vote for my
6 confirmation to the Board of Prison Terms. I've had a life-long
7 career in law enforcement that I think makes me uniquely
8 qualified to remain a commissioner on the Board of Prison Terms.
9 I have 20 years' experience as a police officer, and another 15
10 years as a private attorney.

11 I have also been a deputy director in the
12 Department of General Services where I was in charge of the
13 State Police security here in the Capitol.

14 But there's one other qualification that I
15 believe gives me a unique perspective on the mission of the
16 Board of Prison Terms and the challenges facing it. I've been
17 here before, appointed as a commissioner in 1979 to '81, when it
18 called the Community Release Board.

19 One of the first questions some people ask is,
20 why do I want to return to the board? In part, it's because I
21 believe in its purpose. And I see the board as an agency with a
22 high degree of professionalism, with a staff that is dedicated
23 to what they do, and who work energetically to ensure that the
24 board operations are credible, objective and fair.

25 There have been a lot of changes since my first
26 tour of duty on the Board of Prison Terms. By and large, the
27 inmates are younger, and the crimes for which they are convicted
28 are more violent. Sentencing laws have increased the population

1 of inmates serving life terms. As a result, the workload of the
2 board is considerably greater than it was.

3 I also see other changes in the board itself.
4 The legality of what we do is more complex with court orders,
5 legislative changes, and ballot propositions dictating a lot of
6 how we do our work. There are more issues to be concerned with
7 also, accommodating disabilities of inmates, the treatment for
8 drug offenders, and considering the impact of crime on the
9 victims. This all plays a role in how we conduct and reach our
10 decisions in granting paroles.

11 I can say that personally I know how much work
12 has increased. For two years in a row, the board has conducted
13 a record number of hearings. In the last year since I was
14 reappointed to the board, I've conducted as many hearings in one
15 day as I used to conduct in a week.

16 I have also seen the board make many improvements
17 in how it is organized, and how it manages issues, workload, and
18 staff. I believe the result is an organization that has become
19 more professional and more credible as a result. That doesn't
20 mean that there aren't some big challenges ahead and that more
21 reforms aren't necessary. But I do believe the Board of Prison
22 Terms is more credible now than ever. All the challenge that
23 the Legislature and the courts have presented to us, we'll be
24 able to handle.

25 That's why I'm looking forward to continuing to
26 serve on the board.

27 Thank you.

28 CHAIRMAN BURTON: Senator Johnson.

1 SENATOR JOHNSON: Could you tell us what the
2 status is of the backlog that has existed in the hearings?
3 We've been presented with conflicting views of what the amount
4 of that backlog is. Can you tell us where we are?

5 MR. RISEN: Okay. In the 20 months since SB 788
6 was enacted, the board has eliminated a backlog of about 1500
7 cases. This was because we were using the two-panel
8 commissioners.

9 In 2002, the Board of Prison Terms conducted
10 4,826 parole suitability hearings, two-and-a-half times as many
11 as three years ago before SB 788. In 2001, we held 2,636, which
12 is also a record at that time.

13 Now, the current backlog is approximately 437.

14 SENATOR JOHNSON: The Inspector General's Report,
15 do the figures that you've just given us comport with that, or
16 are there differences?

17 MR. RISEN: There was a time when there was a
18 conflict due to some problems that we weren't aware of. But it
19 has been changed, and since October 2nd, we still -- we do have
20 the same result as the Inspector General.

21 What we did is adjusted ours. We showed 391, and
22 then we moved it up to 437. And from now on, the Inspector
23 General and ours will be the same because we've made this
24 correction.

25 SENATOR JOHNSON: No further questions,
26 Mr. Chairman.

27 CHAIRMAN BURTON: Senator Romero.

28 SENATOR ROMERO: Thank you.

1 There's been quite a bit of discussion about
2 recidivism and alternatives to being returned to prison upon,
3 let's say, a technical violation of parole.

4 You had mentioned in your statement that you
5 think that progress has been made, but more reforms need to
6 occur. Can you outline for the Committee what you believe
7 reforms might be in the area of parole and recidivism in
8 particular?

9 MR. RISEN: May I ask where this was in my
10 statement so I could look at it, on what page?

11 SENATOR ROMERO: Well, it's a general issue
12 overall that I would hope you would be able to comment on, but
13 specifically in your statement I recall reading a section where
14 you talked about early release, and maybe the conditions upon
15 which you might do early release.

16 I don't know that you've addressed the question
17 specifically, but I think it's an important question for a
18 member of the board of parole to address.

19 MR. RISEN: Well, one of the things we should
20 consider is that right now the budget is really in bad shape.
21 So, we have to do dire things to correct this, and one of the
22 things could be releasing people early.

23 And the recommendations that I gave for releasing
24 them early would be to limit their release to only 30 days off
25 of their sentence, and it should be applied to people who are
26 felons who have been sentenced, not to parolees, and also to
27 those who have not been violent offenders. That means a prior
28 conviction record of violent offenses or 115s in the institution

1 for violence. That would be one way of getting a few out of
2 there and releasing, and lowering the costs.

3 SENATOR ROMERO: When you evaluate risk, what are
4 you looking at?

5 MR. RISEN: Whether the inmate is going to be a
6 danger to society when they're released.

7 SENATOR ROMERO: What does that mean?

8 MR. RISEN: Well, whether they are going to go
9 out there and do the same thing over again, commit a crime.
10 That's what we look at when we're determining whether a life
11 prisoner should be released.

12 CHAIRMAN BURTON: Senator Knight.

13 SENATOR KNIGHT: No questions.

14 CHAIRMAN BURTON: If somebody's due to be
15 released January 31st, and they get out January 1st, in other
16 words, that 30 days is going to make them a greater danger than
17 if they did the other thing, or what?

18 MR. RISEN: No, I don't think it'll make them a
19 greater danger.

20 I think it would be one way of alleviating some
21 of the backlog.

22 Evaluating them, I think, one way to make them
23 less of a danger is more and better programs in the institution
24 to give them skills when they go out. I think the institutions
25 try and train them, but they just don't have the money and the
26 instructors to train them.

27 CHAIRMAN BURTON: I think the question Senator
28 Romero asked, and you actually answered the second one, but

1 somebody is out, and what is the definition of a technical
2 parole violation?

3 MR. RISEN: I --

4 CHAIRMAN BURTON: Or an example if there's no
5 definition?

6 MR. RISEN: I think some of the examples I've
7 heard is that someone who is out of prison, and one of the
8 requirements is that they participate in drug testing, and they
9 test dirty. Some would call that a technical violation.

10 CHAIRMAN BURTON: So, does it really make sense,
11 another one would be, I guess, if they got drunk. They
12 associate with an ex-con or something, certain things that they
13 do.

14 In other words, given the fact that we've got
15 budget problems, given the fact almost even if we don't, because
16 even without budget problems they've never had enough people, as
17 you said, to prepare the prisoner for release so maybe when they
18 get out, they figure out they can do something and make money,
19 and worry about somebody robbing them as opposed to them robbing
20 somebody else.

21 Does it make sense to revoke those people back
22 for short periods of time, which actually costs a fair amount of
23 money? Would there be another way to either punish them or do
24 something?

25 According to the Inspector General, by the time
26 you all go through your process with the revocation and
27 everything, the person's time is up anyway. Sometimes they
28 spend more time waiting to get violated than if they got

1 violated, went back and served. They come out which, one, seems
2 stupid, seems to be a waste of money, doesn't do a lot for
3 public safety.

4 MR. RISEN: What might be a technical violation
5 to one parolee may not be to another. You mentioned he
6 shouldn't hang out with certain people.

7 Well, if he was a gang member, I wouldn't
8 consider that a technical violation.

9 CHAIRMAN BURTON: What if the person, you know,
10 there are people in the guy's neighborhood. He's going to bump
11 into them unless you're going to take somebody from Hunter's
12 Point and have them move to Beverly Hills. They're going to be
13 bumping into these people at the grocery store, at the creamery,
14 in a movie, at a bowling alley, assuming people bowl, you know.

15 You're not sending these people back to an area
16 that they weren't from.

17 MR. RISEN: Well, what we try and do is release
18 them to an area where they will be successful. And if it was an
19 area they were a gang member, we'd try and get them to somewhere
20 else so they wouldn't go back there.

21 Now, what I'm talking about -- you're talking
22 about parole revocations; we're talking about when we release
23 them on parole.

24 CHAIRMAN BURTON: I'm talking about parole
25 revocations.

26 My theory about parole revocations by and large
27 is this. If the person commits, they're out of prison and they
commit a crime, they ought to try him, send him back, you know,

1 to the bucket.

2 We have had parole violations of people that are
3 out, they go back to prison for like 60 days, and there's a lot
4 of expense with just the opening administration, all of the
5 stuff they do, plus 60 days, then they're coming back out. As
6 opposed to maybe giving them another warning, maybe having them
7 do something else, maybe giving them an ankle bracelet and
8 putting them in the house.

9 But these violations at the time where the
10 Corrections budget is absolutely out of control, where very
11 little of the money is spent trying to hopefully make sure that
12 these people don't come back, to me the record of the Board of
13 Prison Terms and, quote, "technical" violations doesn't make an
14 awful lot of sense.

15 I don't know whether or not, say, somebody hangs
16 out with the guys he grew up with, or maybe even goes to his
17 class reunion, or he's hanging out with them on the corner for a
18 while, instead of maybe giving the guy a warning and saying,
19 "You do this, you're in great danger of going back," that might
20 be something, as opposed to somebody saying, "I saw him there,
21 Rappie was there," he goes back. He didn't call his parole
22 officer, he goes back. He pees dirty in a bottle, he goes
23 back.

24 I don't think it makes sense from a public
25 safety, and it sure doesn't make fiscal sense where we are now
26 because the Corrections budget, along with probably every other
27 budget in the state, is just going to be fairly well cut.

28 I think that the Board of Prison Terms' record in

1 these revocations, I think, is abysmal. I think one of problems
2 you've got now is, you're two short, right?

3 MR. RISEN: Two short, and one individual's ill,
4 so we're down three for the last month.

5 CHAIRMAN BURTON: And you've been two short for
6 how long about? Porter went out when, in December?

7 MS. SABELHAUS: Hepburn left in May.

8 MR. RISEN: Senator, I would agree with you that
9 if it is really a technical violation there's other things that
10 could be done. They could be warned, or say he was drinking and
11 he shouldn't be, you could get him into an alcohol
12 rehabilitation program that isn't in the institution. There's a
13 lot of those on the outside. Or even a halfway house.

14 CHAIRMAN BURTON: I think that's the type of
15 thinking that you people should really have to do. And I think
16 that, by and large, the first answer is revoke.

17 Again, if somebody does something really bad and
18 commits a crime, a crime-crime, that probably, depending on the
19 crime, you may want to revoke him if he's got a fair amount of
20 time left, or the DA may want to start over and really
21 prosecute, you know, if he's caught somewhere gambling where he
22 shouldn't be.

23 I mean, I just think you all ought to use your
24 judgment.

25 One of the things that I'm looking at, and it's
26 been suggested to me, is in some of the parole hearings, which I
27 think, one, would save money, and two, might well be beneficial,
28 that certain things could almost be done by video

1 conferencing. I know that some of the victims groups like this,
2 and I've talked to some of the defense lawyers. Some like it,
3 some don't.

4 So, we're look at ways to save money, but I think
5 that with your experience both under Governor Deukmejian, your
6 background in law enforcement, that you can take the leadership
7 on some of these things that are not a threat to public
8 safety. To me, I think when the Governor vetoed a bill that we
9 sent him that would have saved 40-50 million dollars, that would
10 have allowed people to get out 30 days early made no sense
11 because if you're a threat today, you're going to be a threat in
12 30 days unless there's an epiphany or something.

13 Now, another theory would be to allow the Board
14 of Prison Terms to provide for nonviolent offenders early
15 release within up to a year, which gives it not a blanket thing,
16 but gives you all, a little more work to do, a possibility of
17 reviewing it. Also could possibly lay it on the Governor, that
18 he's got to make some decisions.

19 Witnesses in support? Witnesses in opposition?

20 Senator Johnson.

21 SENATOR JOHNSON: Move it.

22 CHAIRMAN BURTON: Call the roll.

23 MR. RISEN: Senator, I was a Jerry Brown
24 appointee.

25 SENATOR JOHNSON: I knew that, but moved it
26 anyway.

27 [Laughter.]

28 CHAIRMAN BURTON: I thought you mentioned

1 Deukmejian.

2 MR. RISEN: No, I didn't mention the Governor,
3 but it was Jerry Brown.

4 CHAIRMAN BURTON: Somebody mentioned it.

5 Somebody here's going to get fired.

6 [Laughter.]

7 CHAIRMAN BURTON: You served with my brother?

8 MR. RISEN: Yes, I knew your brother. We had
9 worked San Quentin together.

0 CHAIRMAN BURTON: What were you doing there?

11 MR. RISEN: I was a Board of Prison Terms member
12 then.

13 CHAIRMAN BURTON: When he was teaching there?

14 MR. RISEN: He was also a board member and
15 then --

16 CHAIRMAN BURTON: He used to like to go to
17 Susanville.

18 MR. RISEN: And he was on the Workers Comp Appeal
19 Board, too.

20 CHAIRMAN BURTON: Yes, he was.

21 SECRETARY WEBB: Senator Knight.

22 SENATOR KNIGHT: Aye.

23 SECRETARY WEBB: Knight Aye. Senator Romero.

24 SENATOR ROMERO: Aye.

25 SECRETARY WEBB: Romero Aye. Senator Johnson.

26 SENATOR JOHNSON: Aye.

27 SECRETARY WEBB: Johnson Aye. Senator Burton.

28 CHAIRMAN BURTON: Aye.

1 SECRETARY WEBB: Burton Aye. Four to zero.

2 CHAIRMAN BURTON: Congratulations.

3 MR. RISEN: Thank you.

4 [Thereupon this portion of the
5 Senate Rules Committee hearing
6 was terminated at approximately
7 2:07 P.M.]

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1 CERTIFICATE OF SHORTHAND REPORTER

2
3 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Rules Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
0 attorney for any of the parties to said hearing, nor in any way
1 interested in the outcome of said hearing.

2 IN WITNESS WHEREOF, I have hereunto set my hand this

3 28th day of April, 2003.

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EVELYN J. MIZAK
Shorthand Reporter

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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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5 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, MAY 7, 2003

16 1:38 P.M.

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25 Reported by:

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27 Evelyn J. Mizak
Shorthand Reporter

28

1 APPEARANCES

2 MEMBERS PRESENT

3 SENATOR JOHN BURTON, Chair

4 SENATOR ROSS JOHNSON, Vice Chair

5 SENATOR BETTY KARNETTE

6 SENATOR WILLIAM KNIGHT

7 SENATOR GLORIA ROMERO

8 STAFF PRESENT

9 GREG SCHMIDT, Executive Officer

10 PAT WEBB, Committee Secretary

11 NETTIE SABELHAUS, Consultant on Governor's Appointments

12 SUSIE SWATT, Consultant to SENATOR JOHNSON

13 TIM SHELLEY, Consultant to SENATOR KARNETTE

14 CHRIS BURNS, Consultant to SENATOR KNIGHT

15 CARY RUDMAN, Consultant to SENATOR ROMERO

17 ALSO PRESENT

18 JOHN L. GEESMAN, Member

19 State Energy Resources Conservation and Development Commission

20 SENATOR BYRON SHER

21 ESTEBAN E. TORRES, Member

22 California Transportation Commission

23 ASSEMBLY MEMBER MARCO A. FIREBAUGH

24 SENATOR RICHARD ALARCON

25 SENATOR DENISE MORENO DUCHENY

26 SENATOR NELL SOTO

27 ASSEMBLY MEMBER FABIAN NUNEZ

1 MICHAEL G. YARBOROUGH, Warden
2 California State Prison, Los Angeles

3 Y. MARI GOODMAN, President
4 CSEA Local District

5 DARLENE ESTES, Legislative Liaison
6 Association of Black Correctional Workers

7 JERRY ENNIS, Chair
8 Bargaining Unit 20, Medical and Social Services
9 CCI and LAC Medical Departments

10 JEREMIAH F. HALLISEY, Member
11 California Transportation Commission

12 B.J. SMITH
13 Transportation California
14 Contra Costa County, Contra Costa Transportation Authority,
15 Riverside County Transportation Commission, San Bernardino
16 Association of Governments

17 JOSEPH TAVAGLIONE, Member
18 California Transportation Commission

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28

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
JOHN L. GEESMAN, Member State Energy Resources Conservation and Development Commission	1
Goals	1
Questions by CHAIRMAN BURTON re:	
Role of Commission in Ensuring Energy Supply for State	1
Anticipation of Supply Shortages	2
Introduction and Support by SENATOR BYRON SHER	2
Questions by CHAIRMAN BURTON re:	
Payment for Siting of Large Power Plants	3
Questions by SENATOR KNIGHT re:	
Possibility of Additional Transmission Lines	3
Questions by SENATOR KARNETTE re:	
Natural Gas Situation	4
Motion to Confirm	5
Committee Action	5
ESTEBAN E. TORRES, Member California Transportation Commission	5
Introduction and Support by:	
ASSEMBLY MEMBER MARCO FIREBAUGH	6

1	SENATOR RICHARD ALARCON	7
2	SENATOR DENISE MORENO DUCHENY	8
3	SENATOR NELL SOTO	8
4	ASSEMBLY MEMBER FABIAN NUNEZ	8
5	Statements by SENATOR JOHNSON re:	
6	Impressive and Unprecedented Support	9
7	Background and Experience	9
8	Short and Long-term Goals	10
9	Statements by SENATOR ROMERO re:	
10	Support	11
11	Questions by SENATOR KNIGHT re:	
12	Highway 138	12
13	Questions by SENATOR KARNETTE re:	
14	Single Voice in California Delegation	13
15	Motion to Confirm	14
16	Committee Action	14
17	MICHAEL G. YARBOROUGH, Warden California State Prison, Los Angeles	15
18	Questions by CHAIRMAN BURTON re:	
19	Marijuana Confiscation	15
20	Rejection of Inmate Appeals	16
21	Closed Circuit Television at Institution	16
22	Questions by SENATOR JOHNSON re:	
23	Before Committee for Confirmation Last Year	17

	Lockdown Problems at Tehachapi	17
	Reason for Change in Position	17
	Response by SENATOR KNIGHT	17
	Questions by SENATOR ROMERO re:	
	Average Reading Level of Inmates	18
	Impact of Possible Cuts in Educational Programs	19
	Questions by SENATOR KARNETTE re:	
	Prisoners that Never Get Paroled	20
	Partaking in Education Courses	20
	Questions by CHAIRMAN BURTON re:	
	Average Age of Lifers	21
	Time Prisoners May Spend in Yard	21
	Questions by SENATOR KARNETTE re:	
	Inmates "Eligible" for Employment at Institution	22
	<u>Witnesses in Support:</u>	
	I. MARI GOODMAN, President Local District California State Employees Association	22
	DARLENE ESTES, Legislative Liaison Association of Black Correctional Workers	23
	JERRY ENNIS, Chair Bargaining Unit 20, Medical and Social Services CSEA and CIU Local 1000 Civil Service Division	24
	Motion to Confirm	25
	Committee Action	25

1	JEREMIAH F. HALLISEY, Member California Transportation Commission	25
2	Questions by CHAIRMAN BURTON re:	
3	CTC's Ability to Cope with Budget Cuts	26
4		
5	<u>Witness in Support:</u>	
6	B.J. SMITH Transportation California, Contra Costa County, Contra Costa Transportation Authority, Riverside County Transportation Commission, San Bernardino Association of Governments	27
7		
8	Motion to Confirm	27
9		
10	Committee Action	28
11		
12	JOSEPH TAVAGLIONE, Member California Transportation Commission	28
13		
14	Background and Experience	28
15		
16	Questions by SENATOR KNIGHT re:	
17	Highway 138	29
18		
19	Motion to Confirm	29
20		
21	Committee Action	30
22		
23	Termination of Proceedings	30
24		
25	Certificate of Reporter	31
26		
27		
28		

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4 CHAIRMAN BURTON: Governor's appointees
5 appearing today, John Geesman, member of the State Energy
6 Resources Conservation and Development Commission.

7 MR. GEESMAN: Senator, thank you for the
8 opportunity to hear my qualifications. In the interest of time
I'll be very brief.

9 We have a long list of infrastructure problems
10 confronting the electrical sector.

11 SENATOR KNIGHT: Please turn on that microphone.

12 MR. GEESMAN: We have a long list of
13 infrastructure problems confronting the energy structure. I
14 look at it as my principal responsibility to deal with those
15 during my term in office, and I would appeal to your support in
16 confirming me in that task.

17 CHAIRMAN BURTON: What role does the Commission
18 have in ensuring an adequate supply of energy for the state?

19 MR. GEESMAN: It's the core of our statutory
20 mandate. We are supposed to assess the supply and demand
21 balance confronting the state, provide recommendations to the
22 Governor and the Legislature as to how to respond to that
23 situation, and then as permit applications come before us for
24 new power plants, process those applications.

25 We also have a responsibility to promote the
26 development of renewable sources of energy as well as adopt
27 appliance efficiency standards and building efficiency
28 standards.

1 CHAIRMAN BURTON: Does the Commission anticipate
2 any supply shortages coming up?

3 MR. GEESMAN: I think we've got several problems
4 on the horizon.

5 As it relates to this summer and next summer, the
6 answer is probably not, although the generating sector remains
7 in financial peril. We have may have crossed one of the
8 significant points of vulnerability when Reliant was able to
9 roll over its debt, but several of the other owners of
10 substantial generating capacity in the state remain in
11 negotiations with their banks, and that puts us in some degree
12 of jeopardy.

13 From a strictly physical standpoint, the next
14 several years look to have adequate supplies, but beyond that,
15 we need to make some substantial investments.

16 CHAIRMAN BURTON: Senator Sher.

17 SENATOR SHER: Yes. My apologies to Members of
18 the Committee. We thought you were going to be heard later.

19 I just simply want to appear briefly to support
20 John Geesman for confirmation as a California Energy
21 Commissioner.

22 As you know, and I think you probably heard his
23 biography now, he's uniquely qualified for the position, as he
24 has extensive experience in the field of energy and utility
25 regulation. And indeed, he served as the Executive Director of
26 the Commission from 1979 to 1983, as well as serving on the
27 Board of Governors of the Power Exchange, and on the Governing
28 Board of the Independent System Operator.

1 Mr. Geesman oversees programs at the Energy
2 Commission, important programs, including one that I'm directly
3 involved in the creation of and very interested in, and that's
4 the renewable portfolio standard. And I have great confidence
5 in him. I've had the pleasure of being at meetings where he has
6 been on panels and demonstrated his comprehensive knowledge in
7 this area. He'll do, has done, and will continue to do a great
8 job on the Commission.

9 I would urge your support.

10 CHAIRMAN BURTON: Thank you, Senator.

11 SENATOR SHER: Thank you.

12 CHAIRMAN BURTON: Who pays for the siting of
13 large power plants?

14 MR. GEESMAN: Presently the ratepayers do through
15 our electricity surcharge, although I believe that is under
16 review right now in the budget process as to whether there ought
17 to be an application charge.

18 CHAIRMAN BURTON: Senator Johnson.

19 SENATOR JOHNSON: No questions.

20 CHAIRMAN BURTON: Senator Romero.

21 SENATOR ROMERO: No questions.

22 CHAIRMAN BURTON: Senator Knight.

23 SENATOR KNIGHT: Yes, thank you.

24 We talked about the transmission lines. Is there
25 anything that needs to be done, or that we can do, or that the
26 Governor can do to encourage the additional transmission lines
27 to take advantage of re-routing energy from various parts of the
28 state?

1 MR. GEESMAN: I think that's the principal gap in
2 our electricity infrastructure system. And it's an area where
3 historically the state and the federal government have done a
4 very poor job. The last regional transmission system approved
5 by state government was in the Jerry Brown administration, the
6 Southwest Power Link, which links San Diego with the Palo Verde
7 complex on the Colorado River.

8 We ought to streamline the way we license new
9 transmission --

10 SENATOR KNIGHT: When you say "we," who should be
11 doing it?

12 MR. GEESMAN: State government should, because
13 the state has the authority over the land use component of the
14 bulk transmission system. The state's principal interest in the
15 bulk system is environmental and planning in nature. And we
16 ought to assert that authority to come up with a more rational
17 permit process than we have today.

18 CHAIRMAN BURTON: Senator Karnette.

19 SENATOR KARNETTE: Would you comment on the
20 natural gas situation and what we have to look forward to in
21 that area?

22 MR. GEESMAN: Well, I doubt very seriously that
23 many new supplies are coming on line in the lower 48. There are
24 several proposals to bring down gas by very lengthy pipelines
25 from northern Alaska and the Arctic Circle portion of Canada.
26 The United States Congress has a preferred route; the Canadian
27 government has a couple of preferred routes. It's not clear
28 when or whether any of those projects will actually come on

1 line.

2 In the meantime, there are about half a dozen
3 different proposals to bring liquified natural gas to the West
4 Coast either in Mexico, where the projects are a little bit
5 further along in the permit process, or in California.

6 I strongly think that we probably will enjoy the
7 benefit of new supplies in the future, but it's not clear which
8 of those projects are likely to come on line.

9 SENATOR KARNETTE: Thank you.

10 CHAIRMAN BURTON: Witnesses in support?
11 Witnesses in opposition?

12 Move the nomination.

13 SECRETARY WEBB: Senator Karnette.

14 SENATOR KARNETTE: Aye.

15 SECRETARY WEBB: Karnette Aye. Senator Knight.

16 SENATOR KNIGHT: Aye.

17 SECRETARY WEBB: Knight Aye. Senator Romero.

18 SENATOR ROMERO: Aye.

19 SECRETARY WEBB: Romero Aye. Senator Johnson.

20 SENATOR JOHNSON: Aye.

21 SECRETARY WEBB: Johnson Aye. Senator Burton.

22 CHAIRMAN BURTON: Aye.

23 SECRETARY WEBB: Burton Aye. Five to zero.

24 CHAIRMAN BURTON: Congratulations.

25 MR. GEESMAN: Thank you, Senators.

26 CHAIRMAN BURTON: We will jump out of order and
27 take up Esteban Torres, California Transportation Commission.

28 Senator Alarcon, do you want to introduce him?

Assemblyman Firebaugh.

ASSEMBLY MEMBER FIREBAUGH: Thank you, Mr. Chairman and Members. It is a privilege to introduce Congressman Esteban Torres today to the Senate Rules Committee for his reappointment to the California Transportation Commission.

Mr. Chairman, I've known the Congressman for many years and can tell you that his credentials to serve on the Commission are unrivaled. As you know Senators, Senator Burton in particular, the Congressman served in the House of Representatives from 1983 to 1999, representing the district in Los Angeles County. During his tenure, he was a member of the House Committee on Appropriations and served on the Subcommittee on Transportation.

He's been fighting for California transportation dollars for a long, long time. Served first term on the California Transportation Commission beginning in 1999.

Chairman and Members, Congressman Torres is a Korean War veteran honorably discharged in 1953, has a labor background as United Auto Workers organizer for the Western Region. Has an economic development background, having started the East Los Angeles Community Union Teleco, which today is an important jobs creation and anti-poverty agency in California.

Also in politics and service, served as a Special Assistant to the President under President Carter as Director of the White House Office of Hispanic Affairs.

Mr. Chairman and Members, I've had numerous conversations with folks involved with transportation, and many

1 of my colleagues, and we all regard Congressman Torres as a fair
2 individual, a hard worker, innovator, someone who has
3 consistently and effectively championed California and
4 California's fair share in Washington. And for that reason, my
5 colleagues and I are here to emphatically support his
6 reconfirmation and introduce him to the Rules Committee.

7 CHAIRMAN BURTON: Senator Alarcon.

8 SENATOR ALARCON: Mr. Chairman and Members, it's
9 unusual for a block of Senators and Assembly Members to come
10 before you. Largely these appointments have become somewhat
11 passe, but in this particular case we believe that it is time to
12 make a strong statement of support for somebody who has fought
13 for California's infrastructure particularly in the area of
14 transportation, has demonstrated an outstanding record
15 throughout his history of fighting for Californians.

16 We think that it is most appropriate that his
17 tenure on the Transportation Commission be continued for the
18 good of California.

19 I want to note that he has absolutely been
20 critical to our agenda in going to Washington and working the
21 halls of Congress to demand, and to fight, and to cajole, and to
22 do whatever has to be done to get resources to California. He
23 is our key person on the Transportation Commission, and so we as
24 a body wanted to stand in support of our brother, Congressman
25 Esteban Torres, and support his continued tenure on the
26 Transportation Commission.

27 Thank you.

28 CHAIRMAN BURTON: Senator Ducheny.

1 SENATOR DUCHENY: Thank you. I just came to
2 briefly add my support.

3 I know during the current tenure that Mr. Torres
4 has been on the CTC, he's been one of the Commissioners who's
5 been most attentive to some of the issues in border
6 infrastructure and trying to make sure that we have the roads
7 that get the trucks everywhere around the state and the places
8 that we need. And we need to continue to have people there who
9 actually know the issues, who've been through the history, and
10 who understand it.

11 We'd ask for your support for his reconfirmation.
12 Thank you.

13 CHAIRMAN BURTON: Senator Soto.

14 SENATOR SOTO: I'm not going to repeat all the
15 things that have been said about Mr. Torres.

16 I've known Esteban for the better part of 40
17 years, and always known him to be a fighter for California,
18 fighter for labor people, and a good labor man.

19 And I want to make sure that he's on there
20 because I need your vote on the Alameda Corridor East.

21 [Laughter.]

22 CHAIRMAN BURTON: Assembly Member Nunez.

23 ASSEMBLY MEMBER NUNEZ: Thank you, Mr. Chairman,
24 Members. I'll be very brief.

25 Just to say that Congressman Torres to me has
26 been not only an inspiration, but someone who for many years was
27 a trailblazer in defense of social justice and economic justice
28 for folks.

1 His experience on transportation issues is second
2 to none. He brings an invaluable not just experience with him,
3 but really carries with him so much credibility from our
4 community up and down the State of California.

5 We urge this Committee to show their affirmative
6 support for Congressman Torres.

7 Thank you very much.

8 CHAIRMAN BURTON: Thank you.

9 Senator Johnson.

10 SENATOR JOHNSON: I would like to hear the
11 opening statement of the gentleman.

12 [Laughter.]

13 SENATOR JOHNSON: But I must say, sir, it's very
14 impressive and quite unprecedented to have this number of
15 Legislators show up at a Rules Committee hearing in support of a
16 nomination. You're to be congratulated on that alone.

17 CONGRESSMAN TORRES: Thank you, sir. I thank all
18 of you for convening your Rules Committee, Senator Burton, my
19 good friends on the Committee.

20 I very much want to echo what Senator Johnson
21 just said, that the people that stood behind me are good
22 friends, good supporters, and I very much appreciate their being
23 here today. It was uncalled for. I didn't plan it or anything
24 like that.

25 I think that, as you know, as they've said, I've
26 been a long advocate for the state, for transportation, and I've
27 endeavored to work both at a national and a local level in
28 bringing about a transportation system that really equals none

1 in the country here in California.

2 As you know, my first term on the Commission,
3 this state was flush with money, there was a lot of money to go
4 around. The State Highway Account balance hovered around \$1.5
5 billion-plus, and there was surplus general funds to dedicate to
6 transportation projects.

7 Well, as we sit here today, we know that all
8 that's changed, it's no longer such. The resources available to
9 meet the state's ever increasing transportation needs are
10 severely constrained to the point where there isn't enough money
11 to fund all the projects that are ready to go in the next 18
12 months. The transportation scenario is merely a small part of
13 the fiscal crisis that the state as a whole faces.

14 Given the environment, my short-term goals are to
15 employ the available funds to mitigate traffic congestion while
16 generating jobs and stimulating the general economy of the state
17 to the greatest extent possible.

18 My long-term goal revolves around programming and
19 funding where safety is a high priority. Safety, Senator
20 Knight. And to facilitate goods and movements across the state,
21 such as the 710 Freeway down in South Los Angeles, on the Long
22 Beach Port, and the Alameda Corridor East. These are critical
23 projects that very much impact not only on the State of
24 California but the economic viability of the country as a
25 whole.

26 So, I'm going to work very hard on this
27 Commission as I have. I appreciate the support that the
28 California Senate has given me and the Legislature.

1 On that note, gentlemen and ladies, I want to
2 thank you for having me here today. Senator Burton, good friend
3 in the past, continues to be. I appreciate being here with you.

4 If there are any questions I may answer, I'd be
5 happy to.

6 CHAIRMAN BURTON: Senator Johnson.

7 SENATOR JOHNSON: No questions.

8 CHAIRMAN BURTON: Senator Romero.

9 SENATOR ROMERO: Thank you so much.

10 It's just a great pleasure to have you here
11 today. I know that the Members have heard introductions from so
12 many other Legislators.

13 I've just got to say as well too that when I
14 think of transportation, I think of Congressman Esteban Torres.
15 Coming from the rank and file out of the United Auto Workers, to
16 moving to Congress, and advocating for fair transportation
17 infrastructure for all of California.

18 I represent East Los Angeles. And in particular,
19 I think that the Congressman has been a very fair voice in
20 advocating not only for infrastructure for California and the
21 development of transportation, but has always kept a very high
22 attention to looking at the under-served, to the communities
23 such like East Los Angeles, that historically have been bypassed
24 when it comes to vital transportation projects.

25 I know when I have questions about
26 transportation, it's the Congressman whom I call and ask for
27 advice and consultation with.

28 I don't particularly have questions. We have

1 another few years for us to get together when I do have those
2 particular questions.

3 I just want to thank you, Congressman Torres, for
4 coming here today, for being here, always with dignity for
5 advancing the cause that especially the Latino community, but
6 all of us in California want to see realized. And I look
7 forward to casting an aye vote when the roll is opened.

8 CONGRESSMAN TORRES: Thank you very much,
9 Senator.

10 CHAIRMAN BURTON: Senator Knight.

11 SENATOR KNIGHT: Thank you, Mr. Chairman.
12 When you looked over and talked to me about
13 safety -- --

14 CHAIRMAN BURTON: He couldn't remember that
15 freeway number.

16 [Laughter.]

17 SENATOR KNIGHT: Well, I'm going to ask him, you
18 know.

19 That indicated to me that you understood what
20 Highway 138 was all about.

21 [Laughter.]

22 CONGRESSMAN TORRES: Yes, I do, sir. I've been
23 well briefed, and I understand. I've been there. I understand
24 the issue, and I concur with you. It is a problem that has to
25 be corrected.

26 SENATOR KNIGHT: Very good. I appreciate it.
27 And when?

28 [Laughter.]

1 CONGRESSMAN TORRES: Well, Senator, as I speak,
2 I know that the CTC meeting in May, this May, will be proposing
3 a STIP amendment that will deal with this issue.

4 As I indicated in my opening remarks, there isn't
5 enough money, enough to finish many projects. But there are
6 priorities, as I indicated, and the 138 is a priority. But
7 because of the lack of funds, it will be done in sections, but
8 the work is about to be carried out.

9 CHAIRMAN BURTON: Senator Karnette.

10 SENATOR KARNETTE: I'm interested in all of your
11 experience. We've known you quite awhile myself, and I've
12 enjoyed talking to you many times.

13 But I'm real interested in having a single voice
14 in D.C., our Congressional delegation. And since you were in
15 Congress, and having communities all say the same thing, and
16 developing a timeline for some kind of action, because I know
17 TEA-21 is going to be re-authorized reasonably soon.

18 What do you think we can do? I want to know what
19 we can do here in the state to help speak with one voice with
20 our Congressional delegation from your perspective and get this
21 message across about how we have to have a lot of money.

22 CONGRESSMAN TORRES: Well, Senator, you have been
23 a leading advocate of this need to do this in California.

24 As you know, there's a bias in California --
25 against California in the U.S. Congress. It's called the ABC
26 Syndrome, Anybody But California.

27 We have to overcome that. And we can do that, I
28 think, by joining together -- Democrats, Republicans,

1 Independents -- and telling the California Legislature -- the
2 delegation, rather, that this is a crisis that we find our state
3 in. And unless they can act and work as a single voice in
4 moving the appropriations and the re-authorization of TEA-21
5 re-authorization, California stands to really lose a lot. And
6 that we have to cut out the bickering and the posturing, and
7 work together as a single element in making this happen.

8 I know that the administration will have a plan
9 of its own. Each of the leadership, members of the leadership
10 on both sides of the aisle, will have a plan of their own. But
11 once again, I think you, the Senate, the Legislature here, has
12 to also send a message that we've got to speak with one single
13 voice together and make this happen.

14 CHAIRMAN BURTON: Witnesses in support?
15 Witnesses in opposition?

16 Senator Romero moves. Call the roll.

17 SECRETARY WEBB: Senator Karnette.

18 SENATOR KARNETTE: Aye.

19 SECRETARY WEBB: Karnette Aye. Senator Knight.

20 SENATOR KNIGHT: Aye.

21 SECRETARY WEBB: Knight Aye. Senator Romero.

22 SENATOR ROMERO: Aye.

23 SECRETARY WEBB: Romero Aye. Senator Johnson.

24 SENATOR JOHNSON: Aye.

25 SECRETARY WEBB: Johnson Aye. Senator Burton.

26 CHAIRMAN BURTON: Aye.

27 SECRETARY WEBB: Burton Aye. Five to zero.

28 CHAIRMAN BURTON: Congratulations.

1 CONGRESSMAN TORRES: Thank you, sir.

2 CHAIRMAN BURTON: Michael Yarborough, Warden,
3 California State Prison, Los Angeles.

4 MR. YARBOROUGH: Good afternoon, Senator Burton
5 and distinguished Senators.

6 My name's Mike Yarborough, Warden of the
7 California State Prison, Los Angeles County.

8 It is an honor and an opportunity to serve the
9 citizens of this great state as a public servant. It is not a
10 duty I take lightly.

11 With your permission, I would like to answer any
12 questions you have about my qualifications to serve as Warden.

13 CHAIRMAN BURTON: Earlier this year, you
14 confiscated the largest amount of marijuana ever discovered in a
15 prison.

16 How much was that?

17 MR. YARBOROUGH: It was 7.8 pounds.

18 CHAIRMAN BURTON: And do you have any idea how
19 that got in?

20 MR. YARBOROUGH: Yes.

21 CHAIRMAN BURTON: How?

22 MR. YARBOROUGH: It come in a orderly package,
23 and we have placed a staff member that works -- that was
24 assigned to our Receiving and Release on administrative leave
25 pending investigation into his involvement in colluding with one
26 or more inmates into allowing that package to be brought in and
27 issued.

28 CHAIRMAN BURTON: The team that reviewed

1 Lancaster found out that inmate appeals were being rejected at
2 the very first level because some of the staff doing the
3 screening were not that familiar with the rules.

4 Have you worked on that so they know what the
5 rules are, so they know what to, quote, "reject," and what --

6 MR. YARBOROUGH: Yes, Senator. We've conducted
7 some extensive training with those staff. We've brought in a
8 departmental expert in appeals who has worked with those staff
9 and has actually worked in the Appeals Office, so that we've
10 provided some adequate training to those staff. And we've set
11 up a monitoring system so that we can make sure that the quality
12 of screening of appeals is maintained in the future.

13 CHAIRMAN BURTON: Is that true for the medical
14 appeals as well?

15 MR. YARBOROUGH: Yes, it is, Senator.

16 CHAIRMAN BURTON: Your institution's wired for
17 closed circuit t.v. for what, for security?

18 MR. YARBOROUGH: We have a closed circuit
19 educational system in place.

20 CHAIRMAN BURTON: And you're doing that?

21 MR. YARBOROUGH: We're utilizing that and have
22 formed our own internal education channel that runs 24 hours a
23 day and has available on it literacy training for all inmates
24 that wish to partake of that that have access to a television in
25 their cell.

26 We also broadcast pre-release courses for those
27 inmates, because as you may know, being a Level IV, we do not
28 have the inmates that are going to parole to justify a

1 pre-release program, but yet we have inmates that do parole.
2 So, we utilize it in that fashion.

3 CHAIRMAN BURTON: Senator Johnson.

4 SENATOR JOHNSON: You were before this Committee
5 last year?

6 MR. YARBOROUGH: Yes, Senator.

7 SENATOR JOHNSON: And being confirmed at
8 Tehachapi?

9 MR. YARBOROUGH: Yes.

10 SENATOR JOHNSON: And if I recall correctly,
11 there was a good deal of questioning about problems with
12 lockdown, and the suggestion that there were excessive
13 lockdowns. People couldn't find keys, and so on.

14 Am I remembering correctly?

15 MR. YARBOROUGH: Well, Senator, I'm not sure
16 about not being able to find keys, but lockdowns did effect the
17 two facilities that were 180-degree design that houses some of
18 the more violent Level IV inmates in the state.

19 SENATOR JOHNSON: I guess my question to you,
20 sir, is what happened? I mean, less than a year ago you were
21 confirmed at Tehachapi. What led to the change in positions?

22 MR. YARBOROUGH: Well, there was an opportunity
23 and a need at Lancaster. And I was approached to consider that
24 position. And so, for the benefit of the Department, I agreed
25 to do that.

26 SENATOR JOHNSON: I'm not sure I understand the
27 answer, but Senator Knight apparently can assist me in this.

28 SENATOR KNIGHT: Yes, thank you.

1 CHAIRMAN BURTON: Senator Knight.

2 SENATOR KNIGHT: Thank you, Mr. Chairman.

3 One of the things that happened was that he was
4 recommended to come to Lancaster from Tehachapi.

5 And the other thing was that Warden Rowe had a
6 promotion and was moved out. So, there was an opening in
7 Lancaster, and Mike was recommended because of his efforts in
8 Tehachapi and moved down to Lancaster. And we were glad to have
9 him.

10 CHAIRMAN BURTON: We?

11 [Laughter.]

12 SENATOR KNIGHT: Yeah.

13 CHAIRMAN BURTON: Is there something I don't know
14 about?

15 [Laughter.]

16 SENATOR KNIGHT: I say that every now and then,
17 and somebody always asks me if I've got a mouse in my pocket.

18 CHAIRMAN BURTON: Exactly.

19 Senator Romero.

20 SENATOR ROMERO: Thank you.

21 With respect to the budget and Corrections, we
22 are having discussion about, of course, where we can cut in all
23 departments, including Corrections. Some folks have recommended
24 taking a look and cutting out educational programs, for example,
25 other programs, for example.

26 Can you outline for us what is the average
27 reading level of your incarcerated inmates? What about teacher
28 vacancies? And if you could, at least let us understand what

1 the impact might be if we were to cut out education programs.
2 How would that affect the overall functioning within the
3 institution?

4 MR. YARBOROUGH: First of all, Senator, our
5 average reading level at the prison at Lancaster is 6.3.

6 SENATOR ROMERO: That's sixth grade reading
7 level.

8 MR. YARBOROUGH: Yes, Senator.

9 The impact of potential cuts in education in the
10 institutions would have a significant adverse impact in the
11 ability to maintain security, in that education and security
12 work hand-in-hand. And in order to have a secure, running
13 facility, there must be opportunities and, if you will, a reward
14 system for a positive behavior pattern developed by inmates.

15 Without an adequate education program in place
16 in prison, that would increase the number of idle inmates who
17 would be left to their own devices to fill that void. And
18 having worked in Corrections for a number of years, we
19 understand that inmates are not in prison for making good
20 choices. And so, the result would, in most cases, be some act
21 of violence or some violation of law.

22 So, I am -- I am very much in support of
23 maintaining whatever education programs that we have, even in
24 light of potential cuts that are forthcoming.

25 SENATOR ROMERO: Thank you.

26 CHAIRMAN BURTON: Senator Knight.

27 SENATOR KNIGHT: No questions.

28 CHAIRMAN BURTON: Senator Karnette.

1 SENATOR KARNETTE: You mentioned that some people
2 are paroled from this particular Level IV prison.

3 Are there a lot of them that aren't ever, that
4 are there forever?

5 MR. YARBOROUGH: Yes, Senator. Absent a decision
6 from the Board of Prison Terms, we have over half of our inmates
7 at Lancaster are doing a life sentence, and a significant
8 percentage of the remaining inmates are doing what amounts to a
9 life sentence under the determinate sentence law.

10 SENATOR KARNETTE: What I'm really wondering
11 about, the education part that Senator Romero brought up, do
12 they partake? I don't want to project what I think they do.
13 Do they partake of the education, in-house education, closed
14 circuit t.v?

15 MR. YARBOROUGH: Yes, Senator. With our closed
16 circuit t.v. system, we have established a program that we have
17 an acronym called PREP. It's Preparation for Release through
18 Education and Planning. We have recently initiated that, in
19 light of what may be some cuts on the horizon, to better
20 facilitate what I'll call distance learning inside the prison.

21 We have approximately 285 inmates that have
22 indicated a desire to participate in this program; that would be
23 in addition to any job assignment that they may have.

24 SENATOR KARNETTE: So even though they may be
25 there for life, they still would like to participate in some of
26 education?

27 MR. YARBOROUGH: Yes, that's true, Senator. And
28 this program would also assist an inmate's -- even if they are

1 ten years before parole -- in helping them develop the life
2 skills necessary for re-entry into society.

3 SENATOR KARNETTE: Thank you.

4 CHAIRMAN BURTON: Do you know what the average
5 age of the lifers are?

6 MR. YARBOROUGH: Not off-hand, Senator, I don't.

7 CHAIRMAN BURTON: Could you just get us that? I
8 mean the life-lifers plus the whatevers.

9 Do you have some there, like, 80?

10 MR. YARBOROUGH: I think the oldest inmate that
11 I've seen at Lancaster is about 70, in the low 70s.

12 CHAIRMAN BURTON: A kid.

13 I guess this came from the top, but there have
14 been changes in the statewide amount of time that inmates get on
15 the yard?

16 MR. YARBOROUGH: Well, affording them yard time
17 is a challenge not only in Lancaster but in other prisons as
18 well. And our prison at Lancaster has many missions, which
19 means that we must deliver services that, in some cases, are
20 court mandated, that may conflict with or compete with the
21 amount of yard time.

22 But on average, inmates at Lancaster will get
23 eight to ten hours -- have access to eight to ten hours a week
24 of yard, and inside the housing unit, which we call the Day
25 Room, approximately 28 hours per week.

26 CHAIRMAN BURTON: Aside from what could happen,
27 maybe, in the yard where people don't like each other, confront
28 each other, isn't it just kind of just healthy for them to be

1 outdoors, get a little fresh air? Maybe that in itself would
2 alleviate some of the tensions or whatever, assuming that
3 there's no fights?

4 MR. YARBOROUGH: That's a possibility, Senator.
5 What we have found is that the great number of inmates out on
6 the yard increases the risk of an event happening between
7 inmates.

8 We have, on the other end, endeavored to improve
9 and increase our level of employment. And for the first time in
10 the institution's history, we are now employing 98 percent of
11 all eligible inmates. So, that we can put them together, put
12 them in an activity that may not be on the yard, but they're
13 doing something productive?

14 CHAIRMAN BURTON: Thank you.

15 Senator Karnette.

16 SENATOR KARNETTE: What's "eligible"? What makes
17 them eligible? You said "eligible inmates."

18 MR. YARBOROUGH: Certain inmates that are not
19 eligible are those that are housed in Administrative Segregation
20 that may have some disability that may prevent them from
21 participating in a job assignment, or they may be in a crisis
22 bed, or they may be on pre-parole status. We have a small
23 minimum support facility, and we do have inmates that parole
24 from that facility.

25 CHAIRMAN BURTON: Witnesses in support?

26 MS. GOODMAN: Good afternoon, Senators.

27 My name is Mari Goodman. I'm California State
28 Employees Association President in the district of where

1 Mr. Yarborough is the Warden.

2 I've prepared a brief statement I'd like to say,
3 and I am in support of his confirmation. I'm here today to
4 support Warden Yarborough.

5 Mr. Yarborough acknowledges that professionalism
6 and the opinion of our CSEA members, remaining available on a
7 monthly basis for the Labor-Management meetings, addressing
8 those issues, and committed to resolving them at the local
9 level, responding to our members' concerns.

10 In addition, Mr. Yarborough has provided us with
11 a sincere expertise of a Chief Deputy Warden, Mitch Montero, who
12 is here today. I like to give kudos where kudos belong. Our
13 membership feels that the open-door policy provided in the
14 stressful day-to-day setting of the prison environments help the
15 stewards tackle the daily problems that arise with the
16 commitment of this Warden to help resolve these issues.

17 Based on Warden Yarborough's committed efforts to
18 adhere to contract language, remain available to help resolve
19 issues, and provide respect to our members, CSEA Civil Service
20 Division, Correctional Institutions Committee, submits their
21 support for the confirmation of this warden. On behalf of Jim
22 Hard and Mark Batista, the alternate Deputy Director and officer
23 assigned to this committee, we would like to offer our support.

24 Thank you.

25 CHAIRMAN BURTON: Thank you.

26 Yes, ma'am.

27 MS. ESTES: Hi. My name is Darlene Estes. I'm
28 here representing the Association of Black Correctional Workers.

1 I'm the Legislative Liaison for ABCW.

2 CHAIRMAN BURTON: What happened to Brother Mabry?

3 MS. ESTES: Brother Mabry wasn't able to be here
4 today. He wanted me to extend his apology to you, and that he
5 would make sure that he got to talk to you later.

6 [Laughter.]

7 MS. ESTES: We are here today to support Warden
8 Yarborough in his confirmation for Warden.

9 Personally, I feel that he is a fine, outstanding
10 man with integrity. He will make an excellent Warden, and he's
11 very capable.

12 Thank you.

13 CHAIRMAN BURTON: Tell him to send you any time.

14 [Laughter.]

15 MR. ENNIS: Hello. My name is Jerry Ennis. I am
16 the Chair of Bargaining Unit 20, Medical and Social Services.
17 I'm with CSEA and CIU Local 1000 Civil Service Division.

18 I've had the opportunity to work with Warden
19 Yarborough in California Correctional Institution at Tehachapi.
20 And last month, I went over there and worked at Los Angeles
21 State Prison, Lancaster.

22 Anyway, I talked with several members that are in
23 the medical field, and RN Avery and MTA Johnson, and they said
24 that he is an excellent warden. He's doing a great job. And
25 the Chief Deputy Warden, Mitch Montero, is excellent help to
26 him. And all I hear is very good things.

27 And one thing that -- I've only been in the
28 prison system 11 years, but when I went to Lancaster, everybody

1 seems very happy over there. I don't see any bickering.
2 Everybody was happy. They treated me very kind. It was just a
3 really good experience for me. So, I support --

4 CHAIRMAN BURTON: Do you mean staff?

5 MR. ENNIS: Yes.

6 [Laughter.]

7 CHAIRMAN BURTON: Thank you.

8 MR. ENNIS: Everybody was nice.

9 Anyway, I very much support his confirmation.

10 CHAIRMAN BURTON: Thank you, sir.

11 Any witnesses in opposition?

12 Hearing none, move the nomination.

13 SECRETARY WEBB: Senator Karnette.

14 SENATOR KARNETTE: Aye.

15 SECRETARY WEBB: Karnette Aye. Senator Knight.

16 SENATOR KNIGHT: Aye.

17 SECRETARY WEBB: Knight Aye. Senator Romero.

18 SENATOR ROMERO: Aye.

19 SECRETARY WEBB: Romero Aye. Senator Johnson.

20 SENATOR JOHNSON: Aye.

21 SECRETARY WEBB: Johnson Aye. Senator Burton.

22 CHAIRMAN BURTON: Aye.

23 SECRETARY WEBB: Burton Aye. Five to zero.

24 CHAIRMAN BURTON: Congratulations, Warden.

25 Jeremiah F. Hallisey, Member, California
26 Transportation Commission.

27 MR. HALLISEY: Thank you, Mr. Chairman.

28 I don't really have an opening statement. If you

1 have some questions, you can just shoot. Hopefully figuratively
2 rather than literally.

3 CHAIRMAN BURTON: I didn't know you were older
4 than me.

5 [Laughter.]

6 MR. HALLISEY: I didn't either; '39, January
7 15th, the same as Richard Nixon.

8 CHAIRMAN BURTON: I see that you're succeeding in
9 a seat that was once held by former Supervisor, former Senator,
10 present Judge Quentin Kopp.

11 How do you figure that the CTC's going to be able
12 to deal with making more out of less, so to speak?

13 MR. HALLISEY: Well, hopefully, the -- well
14 basically it comes down to your decision of what you want to do
15 with Proposition 42. If you don't suspend it and agree to fund
16 the Traffic Congestion Relief Programs for the remainder of this
17 year and next year, that totals about 500 million. That would
18 be a big help, especially with an economy that isn't doing very
19 well.

20 If it's complemented by federal funds in the
21 re-authorization, they're talking somewhere between 40 billion
22 and 150 billion dollars for that; could make a big difference.

23 CHAIRMAN BURTON: Senator Johnson.

24 SENATOR JOHNSON: No questions.

25 CHAIRMAN BURTON: Senator Romero.

26 SENATOR ROMERO: No questions.

27 CHAIRMAN BURTON: Senator Knight.

28 SENATOR KNIGHT: No questions.

1 CHAIRMAN BURTON: Senator Karnette.

2 SENATOR KARNETTE: No questions.

3 CHAIRMAN BURTON: Witnesses in support?

4 MR. SMITH: Mr. Chairman and Members, B.J. Smith,
5 representing Transportation California, which are folks that
6 construct transportation in California.

7 With the AGC and the Operating Engineers and
8 Laborers, in strong support of Mr. Hallisey's nomination by the
9 Governor. He's done a great job on the Commission thus far in
10 terms of his command of the facts.

11 I also represent on this nomination Contra Costa
12 County, his home county, Contra Costa Transportation Authority,
13 the Riverside County Transportation Commission, and the San
14 Bernardino Association of Governments, in strong support.

15 CHAIRMAN BURTON: How about the Water Transit
16 Authority?

17 MR. HALLISEY: We'll get them later.

18 CHAIRMAN BURTON: Witnesses in opposition?

19 MR. HALLISEY: I told Senator Karnette there must
20 be something wrong with a nomination where there's at least not
21 some opposition.

22 CHAIRMAN BURTON: Call the roll.

23 SECRETARY WEBB: Senator Karnette.

24 SENATOR KARNETTE: Aye.

25 SECRETARY WEBB: Karnette Aye. Senator Knight.

26 SENATOR KNIGHT: Aye.

27 SECRETARY WEBB: Knight Aye. Senator Romero.

28 SENATOR ROMERO: Aye.

1 SECRETARY WEBB: Romero Aye. Senator Johnson.

2 SENATOR JOHNSON: Aye.

3 SECRETARY WEBB: Johnson Aye. Senator Burton.

4 CHAIRMAN BURTON: Aye.

5 SECRETARY WEBB: Burton Aye. Five to zero.

6 CHAIRMAN BURTON: Congratulations, Jeremiah.

7 MR. HALLISEY: Thank you, Mr. Chairman, Members
8 of the Committee.

9 CHAIRMAN BURTON: I was talking to Mr. Harrington
10 earlier today. He sends his best and hopes for your best in
11 return.

12 Joseph Tavaglione.

13 MR. TAVAGLIONE: You did very well, Senator.

14 CHAIRMAN BURTON: Well, I try. Grew up in North
15 Beach.

16 MR. TAVAGLIONE: I thank all of you for allowing
17 me to be here today.

18 I am basically the new boy on the block. I have
19 been on the Commission for the last four or five months, and I'm
20 trying to learn the ropes, and find out exactly what's
21 happening, and see what can be done for the State of California
22 as far as the transportation is concerned.

23 I am very interested in safety also, Senator.
24 And also, my interest in where the money goes is, with the
25 economy the way it is, that projects that are put out are the
26 ones that will put the most people to work rather than not
27 having people going to work. And that's my -- that's my goal,
28 to put the money where my mouth is, so to speak.

1 So with that, I have also figured it out that I
2 have not been -- I've lost the good days when there was a lot of
3 money, that we could do anything that wanted to be done and
4 trying to find jobs for that money. And I'm sorry that we are
5 where we are today, but I want to do the best I can to help the
6 State of California put the transportation back on.

7 Thank you.

8 SENATOR JOHNSON: Thank you, sir.

9 Witnesses in support? Witnesses in opposition?

10 Questions from Members of the Committee?

11 Senator Knight.

12 SENATOR KNIGHT: Thank you --

13 Just remember that safety issue, and remember --

14 [Laughter.]

15 SENATOR KNIGHT: -- and remember 138.

16 MR. TAVAGLIONE: Senator, I've driven that 138
17 many times.

18 SENATOR KNIGHT: Good, good.

19 MR. TAVAGLIONE: On some of my crews going into
20 Bakersfield we travel that route, and you're absolutely 100
21 percent right. Something needs to be done, and I'll do
22 everything I can to try to have that done.

23 SENATOR KNIGHT: I appreciate it and glad to have
24 you here.

25 MR. TAVAGLIONE: Thank you.

26 SENATOR JOHNSON: Senator Karnette moves.
27 Secretary, call the roll.

28 SECRETARY WEBB: Senator Karnette.

1 SENATOR KARNETTE: Aye.

2 SECRETARY WEBB: Karnette Aye. Senator Knight.

3 SENATOR KNIGHT: Aye.

4 SECRETARY WEBB: Knight Aye. Senator Romero.

5 SENATOR ROMERO: Aye.

6 SECRETARY WEBB: Romero Aye. Senator Johnson.

7 SENATOR JOHNSON: Aye.

8 SECRETARY WEBB: Johnson Aye.

9 I'll hold it open for Senator Burton.

10 SENATOR JOHNSON: We're going to hold it open,
11 but I think that congratulations are now appropriate.

12 MR. TAVAGLIONE: Thank you very much.

13 [Thereafter, CHAIRMAN BURTON

14 voted Aye, making the final

15 vote 5-0 for confirmation.]

16 [Thereupon this portion of the

17 Senate Rules Committee hearing

18 was terminated at approximately

19 2:28 P.M.]

20 --ooOoo--

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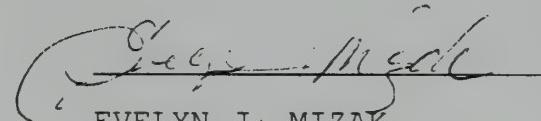
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9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 8th day of May, 2003.

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SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

CARY RUDMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

XEMA M. JACOBSON, Member

San Diego County Regional Airport Authority Governing Board

SENATOR DENISE MORENO DUCHENY

STEVE PEACE, Director

Department of Finance

GLORIA M. ANDREWS, Deputy Director

Personnel Administration Department

JON HAMM

California Association of Highway Patrolmen

AARON READ

CDF Firefighters

Professional Engineers in California Government

California Association of Professional Scientists

1 **SHERRIE GOLDEN**
2 California State Employees Association

3 **BRIAN J. STIGER, Chief**
4 Bureau of Electronic and Appliance Repair

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19
20
21
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23
24
25
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27
28

1 Addendum, Written Responses by Nominees to
2 Questions Posed by Committee:

3	XEMA JACOBSON	45
4	STEVE PEACE ..	53
5	GLORIA ANDREWS	55
6	BRIAN STIGER ..	56

INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
XEMA M. JACOBSON, Member San Diego County Regional Airport Authority Governing Board	1
Introduction and Support by SENATOR DENISE MORENO DUCHENY	1
Goals and Objectives	2
Questions by SENATOR JOHNSON re:	
Noise-level Situation at Balboa Naval Hospital	4
Proposed Solution	4
Questions by SENATOR ROMERO re:	
Air Service between San Diego and Tijuana and Challenges	5
Questions by SENATOR KNIGHT re:	
Sonic Booms	6
Relocation of Airport and Impact on Military in Area	6
Restricted vs. Controlled Air Space	7
Questions by SENATOR KARNETTE re:	
How San Diego Airport Serves Needs of Southern California	7
Motion to Confirm	8
Question by SENATOR JOHNSON re:	
Origin of Name "XEMA"	8

1	Committee Action	9
2	STEVE PEACE, Director	
3	Department of Finance	9
4	Goals and Objectives	9
5	Questions by CHAIRMAN BURTON re:	
6	Three Things Which Would Make Biggest	
7	Difference in Changing State's Fiscal	
8	Structure	10
9	Effect Long-term Debt Ratio Might	
10	Have on Infrastructure Needs	11
11	Questions by SENATOR JOHNSON re:	
12	Governor's Refusal to Release the	
13	Recommendations from Various Departments	12
14	Questions by CHAIRMAN BURTON re:	
15	Release of Recommendations after	
16	Passage of Budget	13
17	Questions by SENATOR JOHNSON re:	
18	Reluctance of Governor to Share	
19	Recommendations with Legislature	15
20	Will Governor Be More Forthcoming about	
21	Expenditure Projections and Long-term	
22	Revenue Projections	16
23	Need for Specific Assumptions on Which	
24	Projections Are Based	17
25	Medi-Cal Fraud	19
26	Questions by CHAIRMAN BURTON re:	
27	Need for Legislature to See List of	
28	Cuts Recommended by Various Departments	20

1 Questions by SENATOR ROMERO re:

2 Finance's Interpretation of
3 Sinclair Paint Decision 22

4 Assessing Fees as Revenue 22

5 Questions by SENATOR KNIGHT re:

6 California Known as Unfriendly to
7 Business 23

8 Questions by SENATOR KARNETTE re:

9 State's Acceptance of Royalties 27

10 Motion to Confirm 29

11 Committee Action 29

12 GLORIA M. ANDREWS, Deputy Director
13 Department of Personnel Administration 29

14 Background and Experience 30

15 Questions by CHAIRMAN BURTON re:

16 Renegotiation of MOUs 31

17 Plans for Reduced Employee
18 Compensation 31

19 Four Multi-year Union Contracts 32

20 Problem with MOUs Coming to
21 Legislature So Late in Session 33

22 Request to Provide Legislature with
23 Summaries of MOUs 34

24 Status of Rural Health Care Equity
25 Program 34

26 Statements by SENATOR KNIGHT re:

27 Late MOUs May Need Consequence 35

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Witnesses in Support:

JON HAMM
California Association of Highway Patrolmen 36

AARON READ
CDF Firefighters
Professional Engineers in California Government
California Association of Professional Scientists 36

SHERRIE GOLDEN
California State Employees Association 37

Motion to Confirm 37
Committee Action 37

BRIAN J. STIGER, Chief
Bureau of Electronic and Appliance Repair 37

Background and Experience 38

Questions by CHAIRMAN BURTON re:

Public's Awareness of Bureau's
Existence 39

More Complaints Referred for
Criminal Prosecution Than in Past 40

Questions by SENATOR JOHNSON re:

Number of Staff 41

Investigators 41

Questions by CHAIRMAN BURTON re:

Number of Investigations and
Citations 42

Motion to Confirm 42

Committee Action 43

Termination of Proceedings 43

Certificate of Reporter 44

1 P-R-O-C-E-E-D-I-N-G-S
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--ooOoo--

3 CHAIRMAN BURTON: Senator Ducheny for
4 Ms. Jacobson.

5 SENATOR DUCHENY: Thank you very much,
6 Mr. Chairman and Members.

7 I'm delighted to have the opportunity to
8 introduce to you somebody that many of us in San Diego have
9 known for a long time who is before you today for confirmation
10 to the San Diego Airport Authority. Xema Jacobson has been
11 active in our community, largely in work through the
12 Electricians Workers and later as our Construction Trades
13 representative.

14 In a male-dominated field, Xema was really a star
15 who built consensus around very complicated issues, bargaining
16 on major project labor agreements. And working with the
17 building trades and the people in the building trades in San
18 Diego gave her a unique perspective on how decisions of
19 government affect real people.

20 She doesn't have any special airport axes to
21 grind, which is important in this context, as the Airport
22 Authority is charged with reviewing at a very large level our
23 regional needs, and has the kind of independence and also the
24 background both in management and in consensus building that we
25 think is important to the San Diego Regional Airport Authority.

26 So, on behalf of myself and Senator Alpert, who's
27 unable to be here today as she's ill, we just wanted to
28 introduce Xema to you.

1 Thank you.

2 CHAIRMAN BURTON: Go ahead.

3 MS. JACOBSON: Good afternoon, Mr. Chairman and
4 Members of the Rules Committee.

5 I have submitted written information regarding my
6 appointment to the Committee, but would like --

7 CHAIRMAN BURTON: That will be made part of the
8 record.

9 MS. JACOBSON: Thank you.

10 I'd just like to bring you up to date on my work
11 so far on the Board and as a member of the Executive Committee.

12 As a Board member, I chair the Operations
13 Subcommittee. Among other responsibilities, this subcommittee
14 oversees the current operations of the San Diego International
15 Airport, the Capital Improvement Program budget at \$219 million
16 over five years, and the Residential Sound Attenuation Program.
17 As Chair of this committee, I am committed to ensuring the
18 continued safe and efficient operation of the Airport. I also
19 believe it is important that the contracts be awarded to
20 responsible companies as we implement our Capital Improvement
21 Program, and I will work towards improving the level of
22 participation of small and emerging businesses in Authority
23 contracts.

24 In addition, I would like to maximize investment
25 in our Residential Sound Attenuation Program. Working with
26 staff, we are developing a proposal that will result in a cost
27 savings on the administrative side, and it'll increase the
28 number of homes that we address each year.

1 While our very significant responsibility of
2 generating an airport site recommendation for a county-wide vote
3 is the most controversial, it is also the most crucial for San
4 Diego County. The best possible scenario is one that addresses
5 the economic needs of our community along with the environmental
6 needs of our residents. In order to do this, we must make sure
7 that the public is involved and we, as an Authority, keep our
8 decision-making process open and transparent. Impartiality and
9 maximum public input are critical elements of this process, and
10 I am committed to pursuing these as we move forward. I believe
11 that our Strategic Planning Committee meetings have shown that
12 we are committed to this kind of public decision-making process.

13 As a native San Diegan, I have heard proposals
14 for airport relocation and complaints regarding the current site
15 all of my life. Countless studies have been done, and still no
16 solution has been achieved. Under the current law, we as the
17 Authority have one chance to take a proposal to the voters that
18 will resolve this issue once and for all.

19 In conclusion, I am both honored and excited to
20 be a part of the new Airport Authority. My efforts during the
21 next four years will have a long-term impact on San Diego
22 County, and I believe it is my duty and responsibility to make
23 sure that this impact is a positive one for our region.

24 Thank you, Mr. Chairman and Members of the
25 Committee.

26 CHAIRMAN BURTON: Senator Johnson.

27 SENATOR JOHNSON: I do feel compelled to ask a
28 question.

1 As a former member of the United States Navy that
2 spent four miserable months on my life at Balboa Naval Hospital,
3 going to Corps School and being awakened every few minutes all
4 night long with the jets coming in, what's the situation today?

5 MS. JACOBSON: We have a curfew.

6 SENATOR JOHNSON: And what's going to be the
7 ultimate solution?

8 MS. JACOBSON: We have a curfew right now where
9 plane cannot take off after 11:00 o'clock at night.

10 SENATOR JOHNSON: Some of us go to bed before
11 11:00 o'clock at night.

12 [Laughter.]

13 MS. JACOBSON: We understand that, and we're
14 working to reschedule some of those.

15 With our Sound Attenuation Program, we're going
16 in and we're putting in new windows, some double-paned windows
17 in homes and insulating them against the sound.

18 One of the solutions to our siting is to address
19 that, and to put the least amount of impact on the community.

20 SENATOR JOHNSON: You know, years later -- I
21 wasn't always a member of the United States Navy -- and after I
22 was out, there was a proposal to build a prison out near George
23 Air Force Base. And the prison did not go forward because
24 federal regulations wouldn't allow an airport that close to
25 prisoners.

26 That may sound like a joke, but it is dead
27 serious, and fulfilled an argument or justified an argument I
28 made when I was under the flight path down there. The

1 difference between being in the Navy and being in prison is that
2 prisoners have some rights.

3 I hope that this is going to work out and that
4 that's going to be dealt with.

5 I have no further questions.

6 MS. JACOBSON: Thank you.

7 CHAIRMAN BURTON: Senator Romero.

8 SENATOR ROMERO: Let me just ask a quick question
9 with respect To the Tijuana International Airport.

10 What air service is between San Diego and
11 Tijuana, and any particular complexities or challenges that you
12 face there?

13 MS. JACOBSON: We don't have any connecting
14 flights from San Diego to Tijuana. People will go to Tijuana
15 and then go south. We have some international flights. I think
16 we have four or five from San Diego into Mexico.

17 Some of the issues that we have and challenges to
18 bring that in as a hub is, of course, the border, and how we can
19 get the federal inspection services to work in conjunction with
20 flights, and from people from going from San Diego into the
21 Rodriguez Airport.. And I think that as we do this, and we
22 realize the challenge that we have region wide, that we'll be
23 working with them to do some kind of planning to use that for
24 part of the international flights.

25 SENATOR ROMERO: Do you find people just
26 bypassing San Diego, going to Tijuana directly and getting
27 cheaper, easier flights?

28 MS. JACOBSON: Some people do. In the south

1 portion of the county they do that. It's easier to go there
2 than it is to come all the way up to San Diego and then go back
3 down.

4 CHAIRMAN BURTON: Senator Knight.

5 SENATOR KNIGHT: Thank you, Mr. Chairman.

6 First of all, I'd like to elaborate on Senator
7 Johnson's comments.

8 It wasn't necessarily the jet noise. It was the
9 sonic booms that were prevalent at the time. And they would not
10 accept a prison where there were continuous sonic booms;
11 although the population, civilian and military at Edwards,
12 experienced that everyday, which was no big deal. We get used
13 to it. In fact, there have been sonic boom programs.

14 Anyway, any time you move an airport, you're
15 going to affect somebody's space, and they're going to be rather
16 protective of it, and you're going to have a problem.

17 How are you going to move the airport and make
18 sure that everybody is in agreement and, in particular, make
19 sure you don't impact the training or mission of the military
20 around the area?

21 MS. JACOBSON: When we first started working on
22 this through SANDAG, there were 300 sites that were on the
23 table. We've reduced those down to 18 sites with 21 scenarios.
24 We have identified the restricted air space for the military and
25 the FAA.

26 As we reduce down, as we start the parameters for
27 reducing down those 18 sites into the 3 to 5 by the end of
28 summer, we're going to look at the impact that the restricted

1 air space has not only for the military but the FAA on siting an
2 airport anywhere in the county, and also looking at joint use of
3 different sites throughout the county, Lindbergh as it exists
4 today, with some other sites in the county.

5 SENATOR KNIGHT: When you say restricted air
6 space for the FAA, you mean controlled air space as opposed to
7 restricted?

8 MS. JACOBSON: Yes. Yes, I do.

9 CHAIRMAN BURTON: Senator Karnette.

10 SENATOR KARNETTE: Coming from Long Beach with an
11 airport which has very similar problems, I agree with Senator
12 Knight. It's going to be difficult.

13 I was wondering, how do you think the San Diego
14 Airport fits into the air service needs of Southern California
15 in general? I know that's something in Long Beach we considered
16 quite often.

17 MS. JACOBSON: San Diego is considered an origin
18 and destination airport. People are coming to San Diego,
19 tourists are coming in, or you're at the last leg of your trip
20 to go home because you live there.

21 We have some flights -- we have -- our flights
22 out of San Diego are going to hubs. We have just a few nonstop
23 flights to the East Coast. We have a few international flights,
24 we have from San Diego to London, which are nonstop.

25 SENATOR KARNETTE: What airline is that?

26 MS. JACOBSON: That's British Airways.

27 And then we have a flight to Montreal. Most of
28 our international flights, they leave San Diego and take a

1 commuter plane up to LAX, and then they go out from there.

2 So, we're interdependent that way. One of the
3 problems that we have as we start to increase demand is, those
4 small commuter planes, they need longer times before they take
5 off and land, in between take-off and landing, so we need to
6 work with the region around us to make sure that we can all
7 anticipate the demand and work together to fill that.

8 CHAIRMAN BURTON: Witnesses in support?

9 Witnesses in opposition?

10 Move the nomination.

11 SENATOR JOHNSON: Mr. Chairman, just before we
12 move it, I'm never going to forgive myself if I don't ask this
13 question.

14 What kind of a name is Xema?

15 MS. JACOBSON: It's Greek. It's a family name,
16 and everyone has a daughter named Xema. And my parents had a
17 daughter named Debbie, and then I was born, and they decided
18 they'd better name me Xema or my grandmother would be very
19 angry.

20 CHAIRMAN BURTON: Call the roll.

21 SECRETARY WEBB: Senator Karnette.

22 SENATOR KARNETTE: Aye.

23 SECRETARY WEBB: Karnette Aye. Senator Knight.

24 SENATOR KNIGHT: Aye.

25 SECRETARY WEBB: Knight Aye. Senator Romero.

26 SENATOR ROMERO: Aye.

27 SECRETARY WEBB: Romero Aye. Senator Johnson.

28 SENATOR JOHNSON: Aye.

1 SECRETARY WEBB: Johnson Aye. Senator Burton.

2 CHAIRMAN BURTON: Aye.

3 SECRETARY WEBB: Burton Aye. Five to zero.

4 CHAIRMAN BURTON: Congratulations.

5 MS. JACOBSON: Thank you.

6 CHAIRMAN BURTON: Steve Peace, Director of
7 Finance.

8 SENATOR PEACE: Thank you, Mr. President and
9 Members.

10 I'm obviously here in a different capacity than
11 I've spent the last twenty years. I look forward to the
12 opportunity to, as I indicated in my written submission, to do
13 whatever I can to provide the leadership in the Department of
14 Finance by which the Members of the Legislature in all four
15 caucuses can be confident in the integrity and consistency of
16 the work product and the numbers.

17 Similarly, to attempt to bridge whatever
18 historical gaps have been there in the context of making sure
19 that to the extent that there are differences of opinion, which
20 should exist between the different elected officials, at least
21 we're arguing about the same facts. And I think that, at its
22 core, is what the responsibility of this job is. I will measure
23 my success at it by the degree to which you all find yourself
24 free to be able to argue your differences of values and
25 differences of purpose without getting bogged down by confusion
26 over what the factual issues are on the numbers that ultimately
27 translate into expressing your values.

28 And I think I'm being characteristically short.

1 [Laughter.]

2 CHAIRMAN BURTON: What are the three things you
3 think would make the biggest difference in changing our fiscal
4 structure?

5 SENATOR PEACE: First, we have to address revenue
6 volatility, either through changing the mix of taxes that we
7 rely upon for state and local government as well, or in the
8 alternative by adopting some sort of reserve requirement that
9 compels the process to provide for higher levels of reserves in
10 high revenue years.

11 Obviously, there's a mix of options in between
12 those two, but there's an inherent relationship between the need
13 for some sort of artificial reserve discipline, given the highly
14 volatile revenue stream that we currently depend upon. I think
15 that's the single most important factor.

16 The second is, and the Governor has directed all
17 the departments and agencies to present comprehensive proposals
18 for streamlining the delivery system of services at the state
19 level, both within the agencies as well as the degree to which
20 between agencies we can do a more effective job of not
21 overlapping functions. I know, for example, our Resources
22 Secretary and EPA Secretary have already submitted suggestions
23 that we're looking at at Finance.

24 In our May Revise, you will see the Governor
25 really focuses very directly on the need for the Legislature to
26 spend this legislative session dealing on structural reform.
27 And we intend to have available to the Legislature as much data
28 options, choices, as possible so that the Legislature can make

1 the ultimate policy decision about what kinds of changes we want
2 to make.

3 That's only two, but I think if I added a third,
4 I'd be diminishing the importance of the two.

5 CHAIRMAN BURTON: What effect do you think the
6 implications of our long-term debt ratio would have on
7 infrastructure needs, the effect it would have on that?

8 SENATOR PEACE: In 2008 in the current
9 projections, we peak out at a 6.8 percent debt ratio. That's
10 significantly above where anyone would want to be. We shouldn't
11 really be even in the sixes. Historically, California's had
12 among the most conservative debt ratios in the country. Right
13 now we're in the high threes, but -- and that assumes that we
14 sell all the already approved debt that is out there.

15 One of the reasons why the Governor has
16 structured his proposal with respect to deficit financing with a
17 new, dedicated tax to a special fund that does not in any way
18 touch or have any history of touching the General Fund, is that
19 without doing so, that deficit financing mechanism would have to
20 be included as part of our debt ratio. It'd be included by the
21 markets as part of the debt ratio, which frankly would put us at
22 8.9 percent in those out years, just simply not a sustainable
23 place to be.

24 The management of our debt is going to be a
25 significant challenge for the fiscal officers in this state over
26 the next five to six years, and it's also going to be a
27 significant challenge to both the Legislature and voters who, by
28 initiative, have often put forth various bonding proposals and

1 mechanisms. And we're going to have to look very carefully at
2 the degree to which we choose to use bond financing to meet our
3 infrastructure demands, because we clearly are at a -- unless we
4 see a dramatic reversal of the currently projected revenue
5 trends, we are substantially above the debt ratio that we would
6 want to be at at our peak period.

7 Now, the good news is that after 2008, under the
8 currently scheduled -- current schedules, that debt ratio starts
9 going back down again. So, if we manage our debt, and we don't
10 significantly increase the amount of issued debt beyond that
11 which we retire between now and 2008, we can manage that.

12 CHAIRMAN BURTON: Senator Johnson.

13 SENATOR JOHNSON: You mentioned that the
14 administration is going to provide the Legislature with a range
15 of options and so on.

16 The Governor late last year asked, or maybe even
17 earlier last year, asked his departments for a list of
18 recommendations on how they might deal with budget cuts, what
19 kinds of budget cuts. And the last I heard, a lawsuit has been
20 filed to get from the administration the recommendations that
21 had come to the Governor as a result of that process. And the
22 Governor resisted making that public.

23 How can we, as a Legislature, be confident that
24 the full range of potential options are on the table for
25 discussion when the Governor is, apparently, hiding from Members
26 of the Legislature and the press and the public what kinds of
27 recommendations came in from his various departments?

28 SENATOR PEACE: The reason why those

1 recommendations are not public yet is because the Department of
2 Finance has to review the recommendations and make final
3 decisions. And the reason for that put very bluntly is, you all
4 know what the survival mode of the bureaucracy is. And what
5 these guys do is, they purposely put what we call Washington
6 Monuments into their proposals in order to subvert any effort to
7 cut back on the bureaucracy. So, what you do is, you get these
8 lists that are salted purposefully with some cuts that you
9 wouldn't support, Mr. Johnson, and I wouldn't support, and
10 nobody would support. But then they get the media all whipped
11 up by saying, "See, these terrible politicians are going after
12 these wonderful programs."

13 SENATOR JOHNSON: They're going to lock the
14 bathrooms in the park.

15 SENATOR PEACE: Exactly, exactly. So, we need to
16 go -- we need to scrub those lists and go through them. We've
17 already begun that process, but because of May Revise, it really
18 wasn't possible to complete that process.

19 So, that is the process which the Department of
20 Finance has to complete to identify what were the real proposals
21 versus to what extent in some of these departments they
22 purposely identified higher priority things we'd all want to
23 protect and skipped over things that would be of lower priority.

24 CHAIRMAN BURTON: In other words, as I'm hearing
25 it, we would find out what their list is sometime after we have
26 passed the budget, which doesn't seem to make a hell of a lot of
27 sense.

28 SENATOR PEACE: No, we've got a couple of weeks

1 to go through them.

2 I think question that Mr. Johnson is pointing
3 toward is the question of how we deal with the structural reform
4 proposals. We have the ten percent -- the budget doesn't
5 have --

6 CHAIRMAN BURTON: Steve, as I heard his question,
7 I asked about structural stuff. He asked about the Legislature
8 wanted us, their people, to be aware of what are the recommended
9 cuts coming out of the departments.

10 SENATOR PEACE: Right, and you're going to have
11 that --

12 CHAIRMAN BURTON: And what I'm hearing is, we'll
13 have it by the time in theory the budget should be passed.

14 SENATOR PEACE: No, you'll -- A, you'll have it
15 before it's passed.

16 But B, the budget doesn't have a -- we don't have
17 an across-the-board cut in the budget. We have a budget -- a
18 cut is, I think, it's 485 million in General Fund, 780 million
19 including special funds that we are attempting to get through
20 negotiations or layoffs.

21 We have also asked for the information about
22 across-the-board cuts, because we have to fill that budget hole.
23 Obviously, we're going to have to provide all of that
24 information for the Legislature to be able to make its
25 decisions.

26 There was just no practical way in which we could
27 finish scrubbing those lists. Now, we've started, and we have
28 some preliminary information and work, and that's why I'm able

1 to tell you, Mr. Johnson, that I know that some of those lists
2 include items that I know, that is obvious to any of us --

3 SENATOR JOHNSON: I understand and I concede the
4 point. That's the way bureaucracies have operated through time
5 immemorial. I recall many years ago when Ronald Reagan was the
6 Governor and Mrs. Johnson worked at the University of California
7 at Riverside. And one of the economy measures that they took
8 when Governor Reagan asked for a 10 percent cut was to take the
9 little lights out of the "hold" buttons on the telephones.

10 [Laughter.]

11 SENATOR JOHNSON: I couldn't make this stuff up,
12 Steve, so I understand that.

13 But I do not understand the reluctance of the
14 Governor to share with the Legislature the kinds of
15 recommendations that he received. I mean, it was a very public
16 thing when he said, you know, "I'm asking all of my department
17 heads to tell us where they might cut." And then to play
18 hide-the-ball on it is a little -- but you've offered an answer
19 to the question.

20 Another sort of related question. The Department
21 of Finance and the administration have been very reluctant to
22 provide the Legislature with any long-term spending and revenue
23 projections. As I understand the argument, it is the budget
24 deals with a year, and so those kinds of discussions are
25 irrelevant.

26 Well, it seems to me that given the kind of
27 extraordinary budget difficulties that we face, and that we're
28 looking at a multi-year projection, and if I understood

1 Governor's remarks to the press earlier today, he was saying,
2 "Boy, we were just about spot-on in our revenue projections, but
3 where we really fell into difficulty was our expenditure
4 projections."

5 Now, I have a great deal of difficulty getting my
6 mind around that, that the Governor didn't know that 600,000 new
7 people are coming into California every year, and didn't know
8 the kinds of recession, whatever you might call it, that we've
9 been going through. The signs were clearly there.

10 I'll get to a question. There's going to be
11 question mark here at the end of this.

12 Is the Governor prepared to be more forthcoming
13 with the Legislature and the press and the public about the
14 long-term expenditure projections and the long-term revenue
15 projections? If we do this this year, this is what we can
16 expect in the out years? Or, is that going to be confidential
17 work product information that's not shared with the Legislature?

18 SENATOR PEACE: The answer's an unqualified yes.
19 And in fact, in this May Revise for the first time in history,
20 the May Revise includes charts in the May Revise document that
21 include a projection of the budget year-plus-one deficit.

22 And the Governor's been very clear in his desire
23 to keep all of us focused on what the out-year consequences of
24 the decisions that are made, and this comes largely as a
25 consequence of his working on the problem back in December and
26 January, and coming to grips with the difficulty of solving the
27 problem.

28 SENATOR JOHNSON: And that is going to include

1 detailed projections, and what is the term? Not a static
2 analysis but --

3 SENATOR PEACE: That's a different question, and
4 I agree with you.

5 SENATOR JOHNSON: -- that presumes that if these
6 actions are taken with respect to taxes, or expenditures, or
7 whatever, and these are the assumptions that we're making with
8 respect to the economy and what's going to happen there, and the
9 detailed basis on which the recommendations that are being made
10 to us are based.

11 SENATOR PEACE: The May Revise includes not only
12 a budget year, but budget year-plus-one in our revenue
13 projections as well as the expense projections, and where we
14 will be if we don't make additional adjustments. In fact,
15 identifies the out-year deficit as 7.9 billion dollars, which
16 would grow to --

17 SENATOR JOHNSON: Not to --

18 CHAIRMAN BURTON: Not beat a dead horse.

19 SENATOR JOHNSON: Yeah, not to beat it over much
20 at least, maybe give the horse a whack or two.

21 But without belaboring the point, I think it's
22 important to also understand the specific assumptions on which
23 that's based: that we think the economy's going to do this; we
24 think increasing the top rates on the personal income tax is
25 going to have this effect; we don't believe people are going to
26 establish a tax residence in Nevada to avoid that, or do like
27 Tiger Woods did and go to Florida.

28 The assumptions on which those projections are

1 based, I think, is an important part, and that's not always been
2 there in the past. We deal with it in a compartmentalized way,
3 well, we're dealing with this year.

4 SENATOR PEACE: The question of static analysis
5 versus dynamic analysis is something you and I have both been
6 frustrated over for many years.

7 The standard operating procedure of the green
8 eye-shade world is to use static analysis. So, when you make a
9 dramatic policy change, they don't really take into
10 consideration what the change in behavior might be with that
11 policy change.

12 Now, you can imagine the culture shock, dealing
13 with me, with respect to those folks that are used to dealing
14 solely in the world of statistic analysis.

15 I couldn't agree with you more. I don't want to
16 over-represent to you what I can accomplish. This is a -- in
17 the world of financial analysts, we have to stay inside the box
18 that the market and the rest of the world uses.

19 But we've had these conversations. I've known
20 Howard, who's the economist for the Department, for a number of
21 years going back to his prior life as an engineer in San Diego
22 when my father was his dentist. And I've had the opportunity to
23 have the conversations. They know how I feel about it. I'm not
24 an economist; I'm not an expert on those aspects, but I totally
25 agree that it's of greater value to the decision-makers if we
26 provide both analyses and both approaches, and I intend to push
27 for that.

28 SENATOR JOHNSON: Steve, it takes an additional

1 step there.

2 The way that the Department of Finance
3 traditionally has operated is bean counters, just totaling up
4 and working with figures.

5 So, while we've got less money available for
6 Medi-Cal, let's say, and the first reaction always is, "Let's
7 cut the provider reimbursement rates," instead of saying, "What
8 about the system of Medi-Cal systemically might we look at?"

9 This is pet peeve of mine. When there are
10 billions of dollars annually in fraud with organized criminal
11 gangs basically ripping off the Medi-Cal system --

12 SENATOR PEACE: It's one of the reasons why
13 you'll see in the May Revise, we actually increased funding for
14 fraud enforcement, and specifically to attempt to get it.

15 Now, I think there are systemic changes that we
16 can make in the system without changing the incentives. But
17 that's a policy, you know, discussion that's going to go above
18 my pay grade.

19 SENATOR JOHNSON: You know, we can't just look at
20 these things as balancing or totaling up a balance sheet.
21 There's got to be -- I mean, that Medi-Cal example just happens
22 to be one that just infuriates me, we're literally losing
23 billions of dollars in California in Medi-Cal to organized
24 criminal gangs, and they're three times a thief. They're
25 stealing from the taxpayers, they're stealing from other
26 government programs, and they're stealing from truly needy
27 people.

28 And the reaction always is, "Let's cut the

1 provider reimbursement rate. We can shave a little off, and
2 they can live with that."

3 Well, the result is that fewer and fewer
4 providers, for example, are even willing to undertake to work
5 under the Medi-Cal system.

6 Mr. Chairman, I apologize for taking so much
7 time.

8 SENATOR PEACE: Message received.

9 CHAIRMAN BURTON: I just want to get back
10 briefly, I see no reason in the world that when a department
11 sends their list of cuts, whether it's real or bogus, or
12 Washington Monument, or Firefighters Memorial, why we can't get
13 a look. It's just like Leg. Analysts give you stuff, some of it
14 seems, with all respect to them, pretty stupid in the real
15 world.

16 The Legislature should have the ability to look
17 at something that the department heads say, "This is what we
18 could get rid of," and we could make judgment whether it's BS or
19 not, as opposed to waiting to be on the May Revise, except this
20 year. If they gave it to us in six months, we probably still
21 won't have a budget.

22 But in normal times we'd have a budget, and I
23 don't see anything wrong with us taking a look at what they send
24 you. I mean, I don't know if it's the end of the world if we
25 get it or we don't, but to think we couldn't determine whether
26 or not it was just a bogus thing or not is --

27 SENATOR PEACE: It's not my -- obviously not my
28 decision to make with respect to it, but I think there's merit

1 in being cautious because we're dealing in an environment in
2 which people will misuse partial information --

3 CHAIRMAN BURTON: The Department of Corrections
4 says, "We ought to eliminate, you know, lunch for all felons."
5 I mean, it's what they're sending to somebody.

6 SENATOR PEACE: But I don't think that's a whole
7 lot different than your staff making a recommendation to you.

8 CHAIRMAN BURTON: As I understand the way the
9 budget works, the departments submit their budget to agency.
10 Agency looks at it or something and gives it to Finance. They
11 do something.

12 It isn't like my staff saying, "This is what we
13 ought to do," and it's in the paper.

14 The budgets are made up going from here to there
15 to there. I don't know, it's just a comment by me. It's not
16 worth the discussion.

17 But I'm just missing a point as to what would be
18 wrong with it, and I really see no value in us getting it in
19 three weeks because either stuff was already accepted or
20 rejected with good reason. It's just a comment.

21 Senator Romero.

22 SENATOR ROMERO: Thank you.

23 First of all, let me begin by applauding your
24 energy and your efforts today. I know it's a big day, it's been
25 a very busy day, starting in the early morning. I know you've
26 been working on this for sometime. So, to be here before this
27 Committee, looking for confirmation, I know there's lot on your
28 plate today, and I certainly want to thank you for what I really

1 believe is the leadership that you have shown.

2 At least I agree with the comments that have been
3 made. I think there's more information that should be
4 forthcoming and given to the Legislature. But I do want to
5 thank you already for what I believe to have already been a more
6 open format for discussion.

7 SENATOR PEACE: Thank you.

8 SENATOR ROMERO: Having said that, let me just
9 ask, and this follows up on the conversation we had earlier,
10 it's been a while since we've had a microphone slammed down on
11 the Floor of Senate, but we have few days up ahead for us to
12 hear those, I suppose. Maybe before you leave, you could
13 reenact that.

14 The Sinclair Paint decision, of course, as we had
15 spoken earlier, there are number of bills going to the
16 Legislature, there's a lot of discussion about fees and, of
17 course, being structured on the decision of the Sinclair Paint
18 case. There is talk of an initiative, perhaps out there, that
19 would seek to overturn this.

20 I'd like for you, on the record, to address how
21 you interpret, how you take a look at the Sinclair decision, and
22 whether or not this is something that in terms of the initiative
23 proposal that's out there to possibly overturn it, what are your
24 thoughts overall in how we assess fees as part of revenue for
25 the State of California?

26 SENATOR PEACE: I haven't looked at an initiative
27 specifically, so I don't know what any general initiative would
28 look at.

1 But I can say from a personal perspective, I
2 generally prefer general taxes to fee base, as opposed to
3 running the economy off of a fee-base mechanism. And I think in
4 general, the business community prefers that as well.

5 There are, however, areas where the nexus between
6 the costs associated with a given economic activity makes sense
7 to build in a fee structure, where you're trying to internalize
8 what otherwise would be dys-economies, particularly where there
9 are environmental impacts, social impacts, health impacts, and a
10 variety of other areas.

11 But I would say as a matter of policy, given the
12 choice, I would prefer to finance the responsibilities of
13 government with broad based taxes rather than fees.

14 SENATOR ROMERO: Thank you.

15 SENATOR JOHNSON: Senator Knight.

16 SENATOR KNIGHT: Thank you, Mr. Chairman.

17 People are talking about the budget today.
18 They're going over numbers and so forth. But nowhere do I hear
19 anything suggesting that maybe there is a problem with the
20 economy in the State of California. We are concerned with
21 revenues, and revenues tend to come from people who are working,
22 and pay taxes, and business that prospers, and business that
23 expands, and entrepreneurs who start up business.

24 California has been known as an unfriendly
25 business state. And it's continuing to move in that direction
26 even more deeper, if there's such an expression.

27 But in any event, I don't hear anybody talking
28 about removing some of the job-killer bills, or making reforms

1 in workers comp. I know there's a lot of bills going through,
2 but nothing that I see is going to make it as far as significant
3 workers comp reform.

4 Business is hurting. Nobody is talking about
5 what we're going to do. And we continue to pass job-killer
6 bills. And business is coming up and just screaming.

7 But here we are.

8 SENATOR PEACE: Well, first, the Governor's May
9 Revise budget includes an assumption of 30 million dollars'
10 worth of savings to the state as a result of the passage of a
11 comprehensive workers comp reform proposal. So, the Governor
12 not only has publicly called for worker comp reform, he has
13 today, by including in his May Revise, underscored the
14 importance to which he includes that, and would hope that that
15 legislation would move earlier rather than later.

16 With respect to the broader issues of economic
17 performance in the nation and California specifically, the
18 shrinkage of the private sector is reflected very directly in
19 our numbers. Our personal income tax receipts are down
20 substantially. That was counter-balanced by our corporate
21 revenues actually being higher. And if you look at our
22 projections for next year, we indicate that we have an
23 expectation that receipts from personal taxes will continue to
24 be down, but that corporate taxes will go up.

25 The reason for that is that the changes at the
26 SEC and other changes in the marketplace, where large
27 corporations were rewarded for pursuing growth rather than
28 profits, their stock went up by growing the companies -- they

1 hired more people; they got more office space; they bought more
2 computers -- because the equity capital and the debt capital
3 both pursued growth, and they were kind of indifferent for a
4 decade as to profit. That precipitated a tremendous expansion
5 in employment as well as pay levels.

6 What has happened in the private sector over the
7 last three years is a dramatic constriction of the private
8 economy as it relates to the number of people employed and, more
9 significantly, the size of those paychecks.

10 And the reason why California was
11 disproportionately impacted was that those higher wage earners'
12 pay, frankly, has been cut, and they've been cut permanently.
13 It's not going to go back to the days of 28-year-olds in Silicon
14 Valley making \$350,000 plus stock options. Out of that 35
15 billion dollar ballpark budget problem, about 10 billion of it
16 will come back when the recession ends. About 6 billion is
17 associated with decisions we all made together. Principally,
18 Democrats expanded access to healthcare-oriented programs. That
19 cost money. And that, Mr. Johnson, is the main area where we
20 saw the program expansion that contributed to our understatement
21 of caseload.

22 Republicans worked on tax relief, and significant
23 monies went back in the form of tax relief. Republicans and
24 Democrats together voted to increase spending on education, and
25 we spent above the Prop. 98 guarantee for a couple of years in
26 succession.

27 Because you have a significant permanent
28 reduction in the pay of those high paid folks, and now you see a

1 marketplace changing where, because of the new rules, and
2 because of all the corporate scandals, corporations now have to
3 show profit. They're shrinking themselves down so that they can
4 show profit in order to raise the value of their stocks and to
5 get debt capital. That changes our paradigm in terms of where
6 we're going to get revenue.

7 And one of the reasons why it's important to do
8 as Mr. Johnson has indicated, and look at what the out-year
9 effect is, is that while 10 billion may come back as a result of
10 the end of the recession, 6 billion we may be able to fix with
11 policy changes, that leaves 20 billion dollars that is gone and
12 is not coming back.

13 And I think that's going to be the hardest part
14 for all of us as policy makers to recognize. That's a permanent
15 adjustment in the economy.

16 Now, to the specific issues with respect to
17 California as it relates to the rest of the country, California
18 is a more expensive place to do business, there's no question
19 about it. We're not going to solve all of the issues that are
20 associated with California being more expensive. We can't
21 compete with China. We can't compete with Mexico. And even
22 where I'm from, the maquiladores in Mexico are dying because
23 they can't compete with China.

24 So, those decisions are big, broad policy
25 decisions that you need both here in this Capitol as well as in
26 Washington in terms of what kind of policies we pursue.

27 But as to the specific issues and specific
28 concerns with respect to the business climate, this

1 administration supports changes such as workers compensation
2 reform and has, in fact, counted on 30 billion dollars' worth of
3 changes so far as it affects state workers as a consequence of
4 those reforms.

5 I just say personally, I sold my business for
6 many of the same reasons that you just articulated.

7 CHAIRMAN BURTON: Senator Karnette.

8 SENATOR KARNETTE: I always enjoy hearing you
9 explain those things. I really follow them.

10 CHAIRMAN BURTON: Speak for yourself.

11 [Laughter.]

12 SENATOR KARNETTE: But it's always entertaining.
13 It's his entertaining personality.

14 I know that you're a creative thinker, and I'm
15 going to say something very different from what everybody else
16 has said.

17 A strange idea was presented to me at lunch, and
18 I want to ask you what you think about it. There were several
19 of us talking about, can states accept royalties that would go
20 into the General Fund if it could be worked out legally so
21 everybody had access, you know, everybody had an opportunity to
22 offer their experiment, their inventions, to the state, and any
23 royalties that would be on a particular invention, and security,
24 some kind of thing on railroads. And part of the agreement was
25 that anything that was sold, the royalty would go to the General
26 Fund.

27 And I know nobody wants to pay sales tax; nobody
28 wants to pay property tax; and we can't do fees, and so forth.

1 And we don't have enough people making a lot of money for income
2 tax. So, we've got to look at new revenues from someplace.

3 Is that a very ridiculous proposal?

4 SENATOR PEACE: I don't think there's any legal
5 prohibition against the state participating in royalties.

6 In fact, we have a -- there is a particular drug
7 involvement that the state has been involved in funding through
8 the University that has to do with a treatment for children in a
9 particular -- I can't remember exactly what the malady is, but
10 it very rarely occurs with children. And the argument was made
11 that we had to pay for it because it wasn't economically viable.
12 But they have the expectation that at some point they'll get FDA
13 approval, and that there'll then be a royalty stream.

14 Now, I will tell you at this point, that's not
15 been -- the predictions of the adventurers, experimenters,
16 whatever, the doctors involved, have not come true, and it's not
17 been a very favorable economic experience for the state.
18 There's been no royalties forthcoming.

19 But I don't believe there's any legal
20 prohibition, and certainly the University of California
21 participates in royalty agreements all the time.

22 SENATOR KARNETTE: We're going to have to find
23 some new income sources. That's obvious. The state's got to
24 get more money in the General Fund if we're going to continue to
25 the services we need to continue, in my opinion. You're a
26 creative thinker. I might be looking into this a little
27 further. I'll talk to you about it later.

28 CHAIRMAN BURTON: Witnesses in support?

1 SENATOR PEACE: There are none.

2 CHAIRMAN BURTON: Witnesses in opposition?

3 Senator Johnson.

4 SENATOR JOHNSON: I've known Steve Peace and
5 Governor Davis both for a couple of decades. I have the
6 greatest respect for Senator Peace, and I trust Senator Peace.
7 I believe at least he will return phone calls.

8 And therefore, I move the nomination.

9 CHAIRMAN BURTON: Call the roll.

10 SECRETARY WEBB: Senator Karnette.

11 SENATOR KARNETTE: Aye.

12 SECRETARY WEBB: Karnette Aye. Senator Knight.

13 SENATOR KNIGHT: Aye, as long as you return my
14 phone calls.

15 [Laughter.]

16 SECRETARY WEBB: Knight Aye. Senator Romero.

17 SENATOR ROMERO: Aye.

18 SECRETARY WEBB: Romero Aye. Senator Johnson.

19 SENATOR JOHNSON: Aye.

20 SECRETARY WEBB: Johnson Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Five to zero.

23 CHAIRMAN BURTON: Congratulations.

24 SENATOR PEACE: Thank you, Mr. Chairman.

25 CHAIRMAN BURTON: Gloria Andrews, Deputy
26 Director, Personnel Administration. Go ahead, ma'am.

27 MS. ANDREWS: Good afternoon, Mr. Chair, Members
28 of the Committee. I have also submitted --

1 CHAIRMAN BURTON: We have that for the record, so
2 you could just feel free to highlight.

3 MS. ANDREWS: I have been working for the State
4 of California for a little over 28 years. I started working for
5 the state back in 1974, as an entry level analyst at the
6 Department of Transportation.

7 I've been working in human resources all that
8 time, primarily in the area of labor relations, both as a
9 departmental management advocate and as a chief negotiator at
10 the Department of Personnel Administration.

11 My first appointment was under then-Governor
12 Deukmejian in 1984. I've been sitting at the bargaining table
13 as either a member of the bargaining team or as a chief
14 negotiator since the first contracts were negotiated. This
15 Governor appointed me to the job of Chief of Labor Relations in
16 July of 1999. And I've had the privilege to be working as Chief
17 Deputy Director, that working title since late December of last
18 year.

19 My style is to be as open and frank as I can,
20 both with the people I work for, the people that work for me,
21 and the people I work with. And I've found that style to be
22 very effective in bargaining my collective bargaining agreements
23 and dealing with the people that work for me and that I work
24 for.

25 Our, of course, immediate priority at DPA is
26 dealing with the decrease in employee expenditures, personnel
27 expenditures, that the Governor has proposed in the current
28 budget for fiscal year '03-04. It'll be a challenge for us in

1 dealing in our collective bargaining agreements that are about
2 to expire this summer. And we'll be working with the unions
3 cooperatively as much as we can in achieving the cuts that the
4 Governor has proposed.

5 At the same time, we are working with state
6 departments on contingency plans if those collective bargaining
7 agreements do not result in the savings that the Governor has
8 proposed, and that's what we'll be working with.

9 CHAIRMAN BURTON: Is it a normal thing in MOUs
10 that they cannot be renegotiated?

11 MS. ANDREWS: That they cannot be renegotiated?

12 CHAIRMAN BURTON: I heard that CCPOA's can't be
13 renegotiated.

14 MS. ANDREWS: We have -- of the 21 bargaining
15 units that we have, there are 4 contracts that have multi-year
16 agreements that do not require -- do not expire this year.

17 CHAIRMAN BURTON: But can't they always be
18 renegotiated?

19 MS. ANDREWS: Oh, yes. And we have asked all 4
20 of those units, in addition to the other 17, to come back to the
21 table and renegotiate them.

22 CHAIRMAN BURTON: Who's coming back, anybody?

23 MS. ANDREWS: We have scheduled sessions with
24 most of them. We've already met with CCPOA once.

25 CHAIRMAN BURTON: The Governor's budget talks
26 about almost a half a billion in reduced employee compensation.

27 What are they going to do? Layoffs, budget cuts,
28 furloughs, what?

1 MS. ANDREWS: We're looking at a variety of
2 options including those.

3 CHAIRMAN BURTON: I understand that.

4 MS. ANDREWS: We're looking at the possibility of
5 deferring the 5 percent salary increase that was negotiated in
6 the majority of those contracts for the first of July. We're
7 looking at voluntary furlough programs. We're also looking at
8 layoffs if we're unable to achieve the savings at the bargaining
9 table.

10 CHAIRMAN BURTON: So, you've got four multi-year
11 contracts.

12 MS. ANDREWS: Four, yes.

13 CHAIRMAN BURTON: Which are what, all cops?

14 MS. ANDREWS: No. One is with the trades and
15 maintenance, crafts and maintenance bargaining unit.

16 CHAIRMAN BURTON: The trades, Highway Patrol,
17 CAUSE, and CCPOA?

18 MS. ANDREWS: It's actually the CDF Firefighters
19 and CCPOA, CHP, and --

20 CHAIRMAN BURTON: The trades.

21 MS. ANDREWS: Right.

22 CHAIRMAN BURTON: And then the others are what,
23 one year, two years, or what?

24 MS. ANDREWS: They were two-year agreements
25 expiring this summer. They were from 2000, July of 20001
26 approximately.

27 CHAIRMAN BURTON: That shows that if they do
28 nothing, they would get the increase that was in their

1 agreement?

2 MS. ANDREWS: The contracts that were negotiated
3 provided for a salary increase on the first of July, and the
4 contracts expire on the second.

5 CHAIRMAN BURTON: So, if nothing happens, they
6 get it.

7 MS. ANDREWS: If nothing happens, they get the
8 increase, yes.

9 CHAIRMAN BURTON: One of the problems a lot of us
10 have, including some of us who carry MOU bills, is we have no
11 idea what's in them because they're always in a rush, they're
12 always at the end of the session, and they're always without
13 reference to file.

14 Is that, like, an intentional deal so that we
15 don't know what's in the MOUs or what?

16 MS. ANDREWS: No, it's not intentional to not
17 give you --

18 CHAIRMAN BURTON: It just always happens that
19 way?

20 MS. ANDREWS: It just seems to happen that way.

21 CHAIRMAN BURTON: Yeah.

22 MS. ANDREWS: I think the last, in 2001, there
23 were a number that didn't make it right before you adjourned,
24 and you had the -- more time to review the actual provisions.

25 I think we need to work on a process in our
26 department to be able to provide you with more complete
27 information so that you don't feel that rushed. And we are
28 trying to come up with that for this current set of bargaining,

1 to see that you get as much information as you need.

2 CHAIRMAN BURTON: This is going to be take-aways,
3 I guess. What we really find out is that there's an awful lot
4 of add-ons that we have no idea what they are. We probably
5 would have voted for it or not had we known. But there have
6 been some things in there that have startled me. And I mean, I
7 come from that background that, nothing's too good for the
8 working class.

9 It seems to me consistently that it's always the
10 last couple of days of the session that these things come in,
11 and by and large, we do it. I think the ones that came in late,
12 then some of the people found out stuff in it that they didn't
13 understand, and then there was a problem with it.

14 When you send up the MOUs, I assume that you all
15 know what's in them?

16 MS. ANDREWS: Yes.

17 CHAIRMAN BURTON: Could you maybe provide the
18 Legislature with summaries that identify exactly what's provided
19 in them?

20 MS. ANDREWS: I think, yes, we can. I think we
21 can.

22 In the past, I think we've been -- we have
23 emphasized on those things that have costs associated with them,
24 direct personnel costs.

25 CHAIRMAN BURTON: You may think you had costs and
26 you emphasized. I think they were not mentioned.

27 What's the status of the Rural Health Care Equity
28 Program?

1 MS. ANDREWS: It's still operating. It's still
2 in existence.

3 CHAIRMAN BURTON: Fine. Is it in this budget?

4 MS. ANDREWS: It's my understanding it is, yes.

5 CHAIRMAN BURTON: It is?

6 MS. ANDREWS: Yes.

7 CHAIRMAN BURTON: How about the retirees?

8 MS. ANDREWS: It's my understanding that's in the
9 budget also.

10 CHAIRMAN BURTON: Senator Johnson.

11 SENATOR JOHNSON: No questions.

12 CHAIRMAN BURTON: Senator Romero.

13 SENATOR ROMERO: No questions.

14 CHAIRMAN BURTON: Senator Knight.

15 SENATOR KNIGHT: You know, MOUs coming up lately,
16 late in the session reminds me of the swimming pools that are
17 supposed to open on the first of May. And every year, it seems
18 as though they are delayed a week, or two weeks, or whatever.
19 They just can't seem to make that date. And every year they
20 know that's a date.

21 Unless there is some consequence for not meeting
22 that date, I don't think they'll ever meet it.

23 CHAIRMAN BURTON: Well.

24 SENATOR KNIGHT: I don't know what consequence
25 could we --

26 CHAIRMAN BURTON: That's the deal.

27 When you get into negotiations it's tough, but
28 it's just -- and I think truly it's like, which group? If it's

1 some group that everybody knows or likes, they don't pay a lot
2 of attention. If it's some group somebody doesn't like, or half
3 the people don't like, the Members don't like, then they
4 scrutinize it more.

5 But I think the message is clear that, and I
6 mentioned this to Marty as well, that we'd kind of like enough
7 notice to know when we're voting on something, that we make a
8 mistake when we vote for it.

9 MS. ANDREWS: We are working, like I said, on a
10 process to provide you with that information.

11 CHAIRMAN BURTON: Senator Karnette.

12 SENATOR KARNETTE: No questions.

13 CHAIRMAN BURTON: Witnesses in support?

14 MR. HAMM: Jon Hamm with the California
15 Association of Highway Patrolmen. We are here to support the
16 appointment of Gloria.

17 I would just like to mention that this is going
18 to be a very difficult year, obviously. And Gloria has a lot of
19 integrity in the relationships that she's established with the
20 Associations, and we think that will be a huge benefit to DPA
21 and the administration.

22 CHAIRMAN BURTON: Thank you.

23 MR. READ: Mr. Chairman, Members, Aaron Read.

24 My boss from the Highway Patrol already
25 testified, but also on behalf of CDF Firefighters, Professional
26 Engineers in California Government, and California Association
27 of Professional Scientists, they also support Gloria.

28 I've known her for many years. She's truly a

1 professional in what she does, and she has probably one of the
2 most difficult jobs of anybody right now.

3 Thank you.

4 CHAIRMAN BURTON: Sherrie.

5 MS. GOLDEN: Mr. Chairman, Sherrie Golden,
6 representing the California State Employees Association.

7 On behalf of the entire Association, we support
8 Gloria's confirmation. It's going to be tough times, and I
9 think if anybody can get this job done, she can get it done.

10 Thank you.

11 CHAIRMAN BURTON: Witnesses in opposition?

12 Seeing none, call the roll.

13 SECRETARY WEBB: Senator Karnette.

14 SENATOR KARNETTE: Aye.

15 SECRETARY WEBB: Karnette Aye. Senator Knight.

16 SENATOR KNIGHT: Aye.

17 SECRETARY WEBB: Knight Aye. Senator Romero.

18 SENATOR ROMERO: Aye.

19 SECRETARY WEBB: Romero Aye. Senator Johnson.

20 SENATOR JOHNSON: Aye.

21 SECRETARY WEBB: Johnson Aye. Senator Burton.

22 CHAIRMAN BURTON: Aye.

23 SECRETARY WEBB: Burton Aye. Five to zero.

24 CHAIRMAN BURTON: Congratulations.

25 MS. ANDREWS: Thank you.

26 CHAIRMAN BURTON: Brian Stiger, Bureau of
27 Electronic and Appliance Repair.

28 We have your comments and letter for the record,

1 so if you could just briefly tell us what you think.

2 MR. STIGER: Sure.

3 Good afternoon, Mr. Chairman and distinguished
4 Members of the Committee. I'm honored to be here before you
5 today as Governor Davis' nominee as Chief of the Bureau of
6 Electronic and Appliance Repair.

7 The Bureau registers more than 11,000 businesses
8 that repair household appliances and electronic products, and
9 also businesses that sell or administer service contracts. The
10 Bureau has 16 full-time staff members. Its headquarters is
11 located in North Highlands and there is a laboratory facility in
12 Upland.

13 Prior to my appointment on October 31st, I had
14 worked at the Department of Consumer Affairs for nine years in a
15 variety of analytical and management positions. I worked
16 closely with several Bureau chiefs and executive officers to
17 resolve their program's administrative and consumer complaint
18 handling issues. Additionally, I have almost 20 years of
19 management experience in both the public and private sectors.

20 Since my appointment, we have improved the
21 organizational structure to address accountability and
22 communication issues. We've taken the steps to improve our
23 enforcement activities, reduce our registration processing time,
24 and we've worked with industry to improve consumer protection.

25 We are in the process of developing our strategic
26 plan which will serve as a blueprint for prioritizing our
27 resources and business activities. I'm pleased to say that we
28 have an impressive, highly trained staff who are dedicated to

1 protecting consumers through education, outreach, and assertive
2 enforcement efforts.

3 As Chief, one of my highest priorities is to
4 ensure that the Bureau provides excellent customer service to
5 consumers, registrants, and the general public; that it's
6 responsive, respectful and relevant to their needs.

7 Thanks for having me. I'm happy to answer any
8 questions that you may have.

9 CHAIRMAN BURTON: Do you have your family here to
10 introduce?

11 MR. STIGER: I do, thank you very much.

12 I have my wife, Debra, who's been by my side for
13 22 years; our three children, Monique, Brian, Jr., and Shalisa;
14 my sister Michele; and I'm very proud to have my parents, Joseph
15 and Patricia Stiger here today.

16 CHAIRMAN BURTON: Welcome.

17 I don't want you feel threatened by this
18 question, but how does the public know you exist?

19 MR. STIGER: We advertise on our web site. We go
20 to outreach events. We partner with the Better Business Bureaus
21 and other consumer protection agencies to advertise our
22 services.

23 CHAIRMAN BURTON: Actually, the Better Business
24 Bureau would probably be one of the better ways to get it out;
25 right?

26 MR. STIGER: Yes.

27 CHAIRMAN BURTON: If you had a web site and
28 nobody really knew there was such an agency or department, they

1 wouldn't know where to go look for it, but the local groups,
2 Better Business groups and things of that sort, help get the
3 word out?

4 MR. STIGER: Yes, they do. We also have at the
5 Department our Consumer Information Center, where people can
6 call about any type of consumer issue at all. So, we get folks
7 that way, too.

8 CHAIRMAN BURTON: This year so far there's been
9 21 complaints that have been referred for criminal prosecution.
10 In the past years, maybe three or four complaints were referred.

11 What's being done? Are they taking the
12 complaints more serious, or they're more serious, egregious
13 types of actions, or what? That's a pretty big jump.

14 MR. STIGER: Yes. We're actually stepping up our
15 enforcement actions this year. We are reviewing a lot of
16 consumer complaints. We're inspecting products, and we're
17 taking them -- and we are taking this very seriously.

18 CHAIRMAN BURTON: What kind of action or act on
19 the part of whoever it is would merit it being sent as a
20 criminal complaint? Would it be an example of just total fraud
21 or what?

22 MR. STIGER: Yes. Probably one of the best
23 examples I can give you is in San Diego, in February, we had a
24 registrant who actually had over \$80,000 worth of consumer
25 products that he just wasn't repairing or giving back to the
26 consumers. That individual actually got three years in jail.

27 CHAIRMAN BURTON: In other words, he took their
28 property and kept it?

1 MR. STIGER: Correct.

2 CHAIRMAN BURTON: So that'd be theft; right?

3 MR. STIGER: Yeah, that was part of it. Also, he
4 said he replaced parts that he really didn't replace, or
5 replaced parts that didn't need replacing. And we actually
6 uncovered that through an undercover investigation.

7 CHAIRMAN BURTON: Senator Johnson.

8 SENATOR JOHNSON: Save me from myself,
9 Mr. Chairman.

10 How many staff people do you have?

11 MR. STIGER: Sixteen.

12 SENATOR JOHNSON: Sixteen. How many of these are
13 investigators?

14 MR. STIGER: We have six full-time field
15 representatives who are supervised by a senior field rep, so
16 that would be a total of seven.

17 SENATOR JOHNSON: I'm sorry, I'm not sure I heard
18 the answer.

19 These are investigators or not?

20 MR. STIGER: They are field representatives who
21 investigate consumer complaints.

22 SENATOR JOHNSON: So even with this great, huge,
23 dramatic particular increase to 21 complaints, that's --

24 CHAIRMAN BURTON: Well, 21 criminal.

25 SENATOR JOHNSON: Yeah, right. That's three for
26 each one of these people if you --

27 CHAIRMAN BURTON: Are there complaints that don't
28 rise, if I could ask, don't --

1 MR. STIGER: Yes.

2 CHAIRMAN BURTON: -- rise to the level of
3 criminal but either civil or license revoked?

4 MR. STIGER: Yes, Mr. Chairman. We also refer
5 cases to Attorney General's Office and -- which result in
6 administrative actions, citations, suspensions, or revocations
7 of licenses.

8 CHAIRMAN BURTON: Do you have the number of
9 those, off hand?

10 MR. STIGER: I do. Excuse me one second.

11 CHAIRMAN BURTON: It's all right.

12 MR. STIGER: So far this year, we've issued --
13 we've had 56 investigations. We've issued 20 citations, and
14 also 3 criminal infractions.

15 CHAIRMAN BURTON: Senator Romero, then back to
16 Senator Johnson.

17 SENATOR ROMERO: No questions

18 CHAIRMAN BURTON: Senator Knight.

19 SENATOR KNIGHT: No questions.

20 CHAIRMAN BURTON: Senator Karnette.

21 SENATOR KARNETTE: No questions.

22 SENATOR KNIGHT: Move it.

23 CHAIRMAN BURTON: Any witnesses in support
24 besides the family? Witnesses in opposition?

25 Call the roll.

26 SECRETARY WEBB: Senator Karnette.

27 SENATOR KARNETTE: Aye.

28 SECRETARY WEBB: Karnette Aye. Senator Knight.

1 SENATOR KNIGHT: Aye.

2 SECRETARY WEBB: Knight Aye. Senator Romero.

3 SENATOR ROMERO: Aye.

4 SECRETARY WEBB: Romero Aye. Senator Burton.

5 CHAIRMAN BURTON: Aye.

6 SECRETARY WEBB: Burton Aye. Four to zero.

7 CHAIRMAN BURTON: Leave the roll open for Senator
8 Johnson.

9 Congratulations, sir.

10 [SENATOR JOHNSON did not return
11 before the Committee adjourned;
12 therefore the final vote for
13 confirmation was 4-0.]

14
15 [Thereupon this portion of the
16 Senate Rules Committee hearing
17 was terminated at approximately
18 2:43 P.M.]

19 --ooOoo--
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27
28

1 CERTIFICATE OF SHORTHAND REPORTER

2
3 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Rules Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 16th day of May, 2003.

17 
18 EVELYN J. MIZAK
19 Shorthand Reporter

Yema Johnson

**SENATE RULES COMMITTEE CONFIRMATION QUESTIONS
SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY**

1. Please provide a statement of goals summarizing what you hope to accomplish during your term in office. This statement may be as lengthy or as brief as you wish.

- To insure that the operations of the San Diego International Airport are efficient and safe.

With the creation of the San Diego County Regional Airport Authority (SDCRAA) Board came the responsibility of oversight of airport operations. With the current state of the airline industry, it is important that the Authority's revenue meets its need to provide service to the public and its employees. I believe that it is important that the Authority has a diversified income stream – not heavily reliant on income generated from the airlines as they are not currently on sound financial footing.

With a Capital Improvement Budget of approximately \$293,000,000 over five years, I believe it is important that the contracts that are awarded are given to responsible companies. I will also work to see more small business involvement in our contracting process.

Our daily operations must remain consistent with the goal to be responsive to the surrounding community in regards to noise levels and flight curfews. Currently, SDCRAA has a sound attenuation program that retrofits homes and certain multi family units to a comfortable level. Although the noise level of newer aircraft has been reduced, this community is still impacted. One of my goals is to work to improve the sound attenuation process by accelerating the program to include more residences each year.

- To insure that the site selection process is done with maximum public input. The public trust involved with the site selection process is crucial.

The other important responsibility of the SDCRAA Board is to bring to the voters an airport site that will meet the needs of the region far into the future. To do this fairly and openly, I believe it is important to get as much input from the communities within the county as possible. Stakeholder groups, business groups and community organizations are also important, but I believe that the "average resident" must also be informed on the process, the reasoning behind the site selection and what impacts it may or may not have

on his/her life and lifestyle. I believe that by inclusion, the public trust will not be lost during this process and that the eventual conclusion will be what is best for the region as a whole.

2. How does your past experience relate to making policy decisions regarding the operations of an airport with regard to siting authority of a new airport, land use authority and other airport planning issues?

My work for the building trades unions gave me experience in land use issues within San Diego County, working with various interest groups representing business, the environment and area residents to achieve consensus on complicated issues. It also gave me knowledge of governmental planning processes as I worked on various projects throughout the County. This knowledge is useful on current issues before the Board on siting, land use and operations. I believe that my background also brings a unique perspective to the Executive Committee and the Board. The majority of my career has been spent representing working men and women in the construction industry, helping them meet the challenges of our times. I believe that this gives me an understanding of our community and the people who live and work here and how our decisions impact their lives. I don't have any preconceived notions or agenda for future airport sites. My concern is for what is best for our region. As a native San Diegan, I have seen the region grow and prosper and I have seen it experience bad times, too. I want to make sure that whatever decisions are reached, that they are made for the common good.

3. How do you think San Diego's airport needs fit into the air service needs of all of Southern California?

San Diego's current and future airport needs are intended to serve the needs of the residents and visitors to the immediate region. The most recent survey of passenger demographics at San Diego International Airport (SDIA) demonstrated that over 85% of the respondents were from the San Diego region with the remaining consisting of California residents or visitors, emphasizing the regional importance of air-service to local residents. Over 42% of the respondents were traveling for business purposes with 36% traveling on vacation, reinforcing the importance of efficient air-service to both the standard of living and quality of life expectations of "San Diegans".

San Diego's demand has increased at an average annual rate of 5.6% since 1975. SDIA currently enplanes 7.5M passengers with over 206,000 total operations consisting of both takeoffs and landings. The resilience of the San Diego region's air-service demand was evident in the minimal

reductions in passenger demand encountered since 9-11. Where other regional airports, including LAX, have experienced declines of 8-11%, demand at SDIA has held its own with much lower reductions that are already showing signs of recovery.

Los Angeles' LAX serves as SDIA's primary International and significant domestic connecting gateway with a majority of the flights being served by regional carriers operating turboprop commuter aircraft. These smaller and slower aircraft reduce airfield processing rates and deplete capacity as they require greater separation from heavier aircraft for safety reasons, hence as both SDIA and LAX approach airfield capacity limits the need to transition to regional jets with more seats available per operation is important to extend the capacity of the two airports. Additionally, the capacity ceiling for LAX now projected at 78 million annual passengers (MAP), the elimination of El Toro from that system, and an adopted moderate growth EIR capacity of 154MAP in 2030 constrains demand in the Los Angeles and Orange County demand centers. The forecast unconstrained demand level of 35.5MAP for San Diego could potentially grow as result of leakage from the north increasing the challenge to not only accommodate locally generated demand but also make provisions for the underserved air-service markets that would otherwise be served out of the LA area airports. To that end, the dual track approach adopted by the San Diego County Regional Airport Authority's Board involves incremental capacity enhancements at SDIA while concurrently advancing the Air Transportation Action Plan to identify a supplemental or replacement airport site for SDIA in order to meet the long range unconstrained demand requirements of the region. San Diego's airport needs must be assigned a high priority in advancing the air service needs of all of Southern California.

4. Previous surveys indicate that high tech firms want and need efficient air transportation, both passenger and cargo services. In your opinion, what do you think would be the economic implications to the San Diego region of not providing adequate air service?

The need to provide San Diego's growing high technology sector with efficient passenger and cargo service is crucial not only to their sustained growth but also fundamental to a diversified, resilient and recession proof local economy which is branching out from an agricultural, tourism and military service based emphasis to destination for multi-national information and biotechnology corporations. The commercial air-service needs of the greater San Diego region is heavily driven by both a growth in the population and the high wage jobs that is represented as a result of the high technology boom. At present growth rates, the current population of 2.9M residents and 15.2M visitors, served almost entirely by SDIA is projected to grow by 69% or 1.3M over the next thirty years bringing the

total population to 4.2M with tourism assumed to increase by 30% and growing to 19.7M.

Recently completed and other ongoing strategic planning efforts including the Airport Master Plan, Economic Impact Analysis and the Air Transportation Action Plan that have evaluated aviation activity levels (demand) in order to recommend near and long term alternatives for additional capacity all predict with a relatively high level of certainty that SDIA will not be able to accommodate anticipated air travel demand over the next ten to twenty years, potentially resulting in the loss of high tech firms which require direct, reliable and conveniently accessible service to their markets. Airlines are the first to acknowledge that circuitous, indirect routing of the high yield business travel passenger is the fastest way to loose that market. Therefore, serving the business traveler bound for other major metropolitan business centers in continental North America, European Economic Union or the Pacific Rim must be accessible, convenient, direct and as seamless as possible with a high standard of customer service is paramount.

Between 2015 and 2020, the SDIA is expected to be serving the absolute upper limits of its capacity, however, the capacity to meet all of the unconstrained demand at SDIA alone will go unfulfilled as airfield and landside constraints in the primary arterial and secondary access roadways reach peak hour capacity well before that time. The timely movement of passengers and cargo in the future is in indelibly correlated with the ability to manage airfield demand and provide first rate, affordable, integrated, inter-modal transportation facilities in response to projected growth. The essential element and the approach through which the San Diego Region can continue to maintain and enhance its prominent position in the emerging global high tech marketplace and maintain sustained positive growth and prosperity for its culturally rich and diverse populace hinges on new air and surface transportation infrastructure. The increasing need for and ability to access international markets with increased airport capacity and expanded air service will assure a vital national and international air transportation network linking the region with people, cultures, economies and businesses around the world. It is possible to have a new commercial service airport in place by 2012-2015, if all the environmental, cost and access links can be addressed enabling the emerging high tech industry, residents and visitors alike the opportunities to participate in and benefit from the increasingly interdependent global economy. Projecting current activity levels to the year 2020 indicates that international air transportation will continue to expand at a rapid rate. Unfortunately, the region is not well positioned for a head start to capitalize on a large share of international commerce opportunities and needs to have tremendous local, state and federal support to succeed.

5. Other than economics, what other factors need to be taken into account in making decisions regarding additional airport capacity?

Currently, SDIA operates primarily as a domestic origin and destination (O&D) airport with some international service. Although classified as a "large hub" airport by FAA due to the number of passengers enplaned as a percentage of the total enplanements in the U.S., it is not a traditional "hub" analogous to Atlanta's Hartsfield or Dallas Fort-Worth's DFW or Chicago's O'Hare. Even though primary carriers such as Southwest, American, United and others operate from SDIA, they do not use SDIA as a "hub" to connect passengers at the airport to a second or third destination. SDIA as an end of the line "spoke" is a place where international and domestic passengers start or end their trip, and where most arriving passengers spend time in the area before resuming their return trip or traveling to another destination.

SDIA's prime location is causing it to become a victim of its own success as passengers bound to and from the airport must contend with traffic generated by non-airport related business centers and the commuter peaks generated by employees bound to and from those expanding businesses, resulting in the primary roadways expected to be at unacceptable levels of delay within 10 years. Increasing levels of aircraft operations result in a cumulative environmental impact in the form of noise to communities located in the approach and departure paths of the single runway hemmed in by rapidly rising terrain making it difficult to distribute the flight tracks in order to share the noise and provide relief to those communities. As a result SDCRAA and FAA have had to undertake a costly sound attenuation program to insulate residences at an average cost of \$55,000 per house. Then there is the issue of runway capacity, as SDIA's single runway reaches it over the next ten or so years, it is a demonstrated fact that capacity is rarely sustained at a flat optimal level of activity from that point forward. The usual progression of events are increasing levels of delay accompanied by deteriorating levels of service and, indeed, diminishing capacity as has been the case with LaGuardia, John F. Kennedy and Regan Washington National Airports where demand is managed with either slot controls or lotteries. Finally, there is the issue of safety, as urban development, both residential and businesses as well as recreational and roadway improvements, encroach into the airport's environs the assembly of a growing population in Runway Protection Zones (RPZ's) as well as within the runway's approach and departure path are expected to increasingly become a factor multiplying the potential for collateral damage, injury and loss of life in the event of a short landing, rejected takeoff or accident.

6. Looking ahead to the future, what changes do you see in the air service market?

The profound and adverse effects on the industry initially precipitated by the "silicone bust" and high profile failures in the financial markets with the collapse in the energy and technology sectors rife with scandal and high profile confidence schemes such as Enron, Worldcom and others had a dampening effect on the airline industry. Since the airline markets are usually at the leading edge of a recession and at the trailing edge of a recovery, and the network airline industry of established carriers was already suffering from high cost structure and excess capacity, their fortunes changed rather quickly. Their situation worsened dramatically with the terrorist attacks on 9-11-01 and the ensuing security requirements and war on terrorism in Afghanistan and more recently in Iraq. The airline industry is wrestling with several methods of operation in delivering air service while remaining competitive with the low cost niche carriers like Southwest, Jet-Blue, and Spirit, among others, that concentrate on domestic point to point service routes focusing on specific geographic areas and operate from secondary airports by heavily utilizing homogeneous fleets and keeping services beyond the very basics at a minimum. While the low cost carriers have been able to show some slight profits, the networks have been hemorrhaging with collective losses in the tens of billions.

The network carriers rely on economics of scale by concentrating their operations from geographically centralized hubs at primary gateway airports to distribute passengers usually with a single stop or transfer. The "hub and spoke" routes are "fed" with feeder routes operated by regional carriers that are affiliated with the network airlines. Alliances and code share agreements have already extended this established post deregulation model to the far reaches of the globe. Dramatic and enduring changes are already evident in the industry with network carriers delaying the acquisition of new fleets, drastically reducing cost prohibitive capacity, renegotiating union labor agreements, outsourcing to contract services, cutting back on liberal frequent flier programs and generally streamlining to be more competitive against the low cost carriers. The fact that they are striving to survive is in and of itself encouraging as the point to point low cost air-service carriers would not be able to match or replace the capacity or economic synergy that is attributed to the network air-service carriers today.

THE NEXT THREE YEARS - The now well recognized term "hassle factor" to describe the difficulty passengers encounter in accessing airports resulting primarily from mandated security requirements has adversely affected the short-haul markets representing trips under 500 miles. The carriers have and are expected to continue eliminating many

services in the short haul markets and continue to cut capacity by reducing the size of aircraft in all but the most densely traveled markets. While service is expected to continue to decline somewhat in the San Diego region, the biggest cause for concern is whether or not the more rapidly declining revenue losses can be arrested and stabilized because of the dominance of low-cost carriers in the San Diego markets which discourage all but the leanest carriers from entering to compete. San Diego initially will see more and more regional jet service serving longer and thinner routes with some recovery in the longer haul service to the mid-west and eastern seaboard.

THE FUTURE – Barring any egregious breaches in security by terrorists, there is little doubt that the recovery of the economy now slated for the third quarter of 2004 will pull the surviving air service carriers out of their current slump, with new domestic and international service emerging. History has shown us time and again that the anomalous downturns triggered by crisis and incidents tend to be aberrations in an otherwise healthy growth rate and, with San Diego's past performance, a return to sustained growth is likely to return by 2005. The overall effect would have been a shift in the forecast trend line for a period of four years causing the physical capacity of the runway to occur as many years later.

7. Obtaining public support for providing additional airport capacity or determining a site for a new airport is a challenging task. How do you feel the public should be involved in this effort?

Obtaining public support for the siting of a new airport in the San Diego region is expected to be the most challenging aspect of the Air Transportation Action Plan process. At all times and in all instances, the integrity and credibility of the process will need to remain transparent and above reproach with active and frequent participation by members of the Technical Advisory Working Group as well as the Policy Steering Committee which would be the Board's Strategic Planning Committee meeting bi-weekly, as well as participation from the full Board meeting monthly in a public forum. The approach to public involvement will need to be proactive and sustainable with frequent updates through community meetings, updates to stakeholders in the civilian and military committee and the utilization of both external media and internal marketing and communications initiatives such as brochures, website, press releases and reports to ensure an involved and active public. An indifferent, apathetic or adversarial public would stymie the process as the site selection decision is slated for a ballot initiative in November 2004 or 2006.

8. Given San Diego's geographic location, border with Mexico and the Tijuana International Airport, what opportunities and what challenges do you see in terms of providing air service?

The proximity of San Diego's geographic location to Mexico's border and Tijuana International Airport presents as many opportunities for a cross border international terminal concept to relieve capacity as it does challenges associated with overlapping terminal, en-route and transitional airspace as well as political/regulatory protocols and agreements. The advantages of utilizing latent capacity and eventually expanding Tijuana International Airport to be connected to SDIA with some means of sterile mass transit to provide Federal Inspection Services processing presents some advantages, however the airspace challenges are significant as the existing Tijuana Rodriguez International Airport Runway 9 operation creates additional adverse impacts affecting North Island and Brown Field. North Island Runway 18 departures climb to 2,000 Mean Sea Level (MSL) on initial departure. Since the Tijuana arrival is at 2,500 feet MSL on the instrument landing system (ILS) approach, North Island departures must be held on the ground until the Tijuana arriving aircraft is clear of the North Island departure path. Similarly, Brown Field instrument departures must be delayed until the Tijuana arriving traffic is clear of the departure course. The increased level of activity anticipated at the replacement airport site would result in more significant impacts than exist today with east flow operations at Tijuana Rodriguez International Airport. Hence, the airspace constraints, as well as the onerous regulatory, procedural and legal issues that arise when national governments get involved, may negate any benefits with this option.



GRAY DAVIS, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

Goals Steve Peace

**Steve Peace
Statement for Confirmation Hearing
Senate Rules Committee
May 14, 2003**

Thank you for this opportunity to outline my short and long-term goals for the Department of Finance.

My immediate short-term goal is to get a balanced, on-time budget approved by the Legislature and to the Governor for his signature.

It is so important to the continued future fiscal health of California that this budget is passed on time. The financial markets demand it. Those who will loan us the money to address our cash needs demand it. Common sense demands it.

It is my job as the Administration's Chief Fiscal Officer to work with you, address your concerns and requests, and win your confidence with respect to the credibility of the information you need to make decisions.

Putting together a Budget for this State is no easy chore. There are no magic bullets. No economic forecasts that indicate a recovery is right around the corner. We expect more kids in schools and more university students. With our aging population, we can expect medical needs to increase. Caseload will continue to grow.

Everyday Californians and all interest groups must bring their concerns and their solutions to the table. This problem will not be solved by protection of one interest group or one program over another. We must all look at the Budget, its shortfall and its solution in the aggregate.

For the long-term, and the future fiscal health of California we must also adopt reforms to our outdated revenue structure and reforms to our fiscal and budget tools to protect the State's ability to continue support for vital services. The Governor has made it clear that this budget should deal with California's many structural problems. He does not want to hand off to his successor a continuing structural problem or a limited toolbox. This is an opportunity for genuine reform.

I am sure you will recall that for years I have been fighting for reform of our outdated tax structure, the outdated way we interact with local governments and the insane way we have taken away the incentives for local governments to make wise land

use decisions. These are all things that we need to deal with after we accomplish the immediate task of solving this year's budget problem.

The national recession has simply accelerated a trend that would have inevitably led us to this juncture.

California's fiscal structure does not work over the long haul. It cannot work. It is the result of a hodge podge of decisions made by the legislature and by voters over the past 40 years.

We have survived it to date only because of the strength of the education and physical infrastructure backbone California built in the 1960's. This Legislature will be challenged by the necessity and the opportunity to disentangle the myriad of conflicting and inefficient Rube Goldberg - like features of current law, which prevent California's economic growth from keeping pace with that of its population.

The Department of Finance must perform two critical functions as the Legislature and Governor confront this challenge. First, you must have confidence in the objectivity of our information. Second, our fiscal oversight of the state bureaucracy itself must reflect the need to measure and maximize productivity. The Department must do its part to make an imperfect system do the best it can as policy-makers work diligently to improve upon the system itself. I hope I can be helpful in that effort.



Goals
Gloria Moore Andrew

DEPARTMENT OF PERSONNEL ADMINISTRATION

ICE OF THE DIRECTOR

11 "S" STREET, NORTH BUILDING, SUITE 400
ACRAMENTO, CA 95814-7243

Statement of Gloria Moore Andrews Confirmation Hearing, May 14, 2003 Senate Rules Committee

The following briefly describes my primary goals at the Department of Personnel Administration (DPA). My immediate concern is the State's budget shortfall and the need to reduce employee compensation costs. My longer-term goal is to maintaining a stable workforce to deliver services to Californians.

- ***Negotiate labor contract concessions***

DPA has asked each of the 21 bargaining units to renegotiate pay raises the State agreed to under the current contracts. Our goal is to achieve \$855 million in savings from employee compensation; we believe that if we can accomplish this at the bargaining table, the result will be less disruptive to the State. If necessary, we are prepared to close this budget gap through other means, including layoffs.

- ***Prepare for layoffs***

If our negotiations don't result in timely agreement on how to achieve these savings, other measures to reduce payroll costs will be necessary, including layoffs. DPA is working closely with departmental personnel and labor relations offices on their layoff contingency plans.

- ***Negotiate new contracts***

Since 1999, we have succeeded in reaching agreements with all 21 bargaining units. 17 bargaining unit contracts expire this July. Our goal is to reach timely agreement since, as a general rule, protracted negotiations depress productivity, undermine workforce stability, and complicate planning and budgeting.

- ***Control health care costs***

DPA's long-term goal is to work cooperatively with the unions to control rising health care costs. If the Legislature succeeds in reforming health care policy for the state in general, it will also help us control our costs as an employer.

- ***Develop Excluded Employee compensation policy***

The Legislature authorized creation of a task force to develop new policy in this area. Through this task force, I remain committed to developing innovative ways to set salaries and benefits for excluded employees, subject to available funding.

- ***Strengthen State workforce planning***

This includes professional development for our current workforce, anticipating future areas of personnel shortages, and analysis of retirement and demographic trends. Currently, we conduct decentralized workforce planning as part of the budget process.

- ***Continue to strengthen employer-employee relations***

In today's fiscally restrictive times, it is definitely a challenge to maintain, much less strengthen, employer-employee relations. However, it is imperative that we maintain uninterrupted, high-quality service to the people of California. Positive relationships with labor enhance that effort by promoting an environment that continues to retain and recruit qualified employees. After working cooperatively to address the effects of the current budget situation, DPA must keep working with the State employee unions to ensure we maintain a skilled, productive, and motivated workforce.



Bureau of Electronic and Appliance Repair Operational Goals

On October 31, 2002, Governor Davis appointed me to Chief, Bureau of Electronic and Appliance Repair (Bureau). I spent the first 90 days as Chief meeting with Bureau staff, industry members, and reviewing consumer complaints. The following short and long term goals are the result of my initial and ongoing assessment of the Bureau.

Short Term Goals (up to 12 months)

Goal: Establish an organizational structure that promotes communication, accountability, and process improvement

Objectives:

- Formalize managerial and supervisory reporting relationships
- Define roles and responsibilities for all staff
- Communicate performance expectations throughout the Bureau
- Establish weekly management meetings and monthly staff meetings
- Develop desk procedures and training manuals
- Schedule a review of all processes and make improvements as appropriate

Goal: Ensure fiscal stability of the Bureau

Objectives:

- Identify opportunities for cost savings
- Eliminate all unnecessary travel expenses
- Delay purchasing equipment when appropriate
- Increase efforts to collect unpaid citations
- Develop contingency plans to address potential staffing reductions

Goal: Improve enforcement activities to better protect consumers

Objectives:

- Develop a comprehensive enforcement strategy that focuses on consumer complaints
- Develop a case management system to reduce complaint mediation, reduce investigation time and to use as a monitoring tool for management
- Shift administrative enforcement tasks from field staff to headquarters
- Develop an Investigation Procedure Manual to ensure consistency among field representatives
- Prioritize cases filed with the State's Attorney General Office

April 25, 2003
Page 2

Goal: Reduce registration processing time

Objectives:

- Develop desk procedures that include processing time frames
- Revise mail processing procedures to ensure the timely delivery of completed applications and the deposit of registration fees.
- Provide remedial training to existing staff, communicate expectations, and monitor work flow

Goal: Enhance the Bureau's informal Advisory Council

Objectives:

- Establish a public-member majority of representatives on the council
- Develop operating procedures
- Develop a new member orientation to educate members about their role and responsibility as advisory council members

Goal: Work with the industry to improve consumer protection

Objectives:

- Conduct workshops to educate industry members on California law
- Establish contacts with large registrants i.e. Sears to facilitate the handling of consumer complaints
- Make presentations to vocational school students regarding Bureau regulations

Goal: Enhance Bureau services to consumers, registrants, and consumer protection organizations

Objectives:

- Redesign the Bureau's web site and increase consumer related information and materials
- Provide general information about the Bureau to each District Attorney and Better Business Bureau in California
- Attend consumer outreach events
- Issue press releases for significant enforcement actions

April 25, 2003
Page 3

Long Term Goals (beyond 12 months)

Goal: **Educate field staff on the service and repair of highly technical products**

Objectives:

- Ensure all field staff earn certifications in the field of computer repair and service
- Send field staff to training on the service and repair plasma and high definition televisions
- Provide training on the installation of audio / visual equipment in automobiles

Goal: **Improve the Bureau's facilities**

Objectives:

- Move to a larger facility that accommodates Headquarters staff in one central location
- Improve and expand the laboratory in Sacramento to include plumbing and 220 electrical outlets

Summary:

The Bureau has a dedicated and hard-working team of individuals who are committed to protecting California consumers. I'm confident that with support from the Legislature, the Bureau will achieve these goals and provide services to consumers and registrants that are responsive, respectful, and relevant to their needs.





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25 Reported by:

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27 Evelyn J. Mizak
Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

MEMBER ABSENT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

CARY RUDMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

MARK A. BOSETTI, Member
State Board of Forestry and Fire Protection

WILLIAM W. KEYE
California Licensed Foresters Association

MELINDA TERRY
California Forestry Association

MARK PAWLICKI
Simpson Timber Company

PAUL MASON
Sierra Club California

1 SUSAN BRITTING, Ph.D., Member
2 State Board of Forestry and Fire Protection

3 ALLEN AMARO
4 Veterans for Better Government

5 VERN GOEHRING
6 California Native Plant Society

7 ANDREW "KIRK" MARCKWALD, Member
8 State Board of Forestry and Fire Protection

9 DAVID NAWI, Member
10 State Board of Forestry and Fire Protection

11 MAELEY TOM, Member
12 State Personnel Board

13 PERRY KENNY, President
14 Asian State Employees Association

15 EDWIN PEREZ, Chair
16 Asian Pacific Islander Committee
17 SEIU Local 1000, AFL-CIO, CLC

18 ELAINE CHIAO
19 Asian Pacific State Employees Association

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23

24

25

26

27

28

INDEX

	<u>Page</u>
3 Proceedings	1
4 <u>Governor's Appointees:</u>	
5 MARK A. BOSETTI, Member	
6 State Board of Forestry and Fire Protection	1
7 Summary of Goals	1
8 Questions by CHAIRMAN BURTON re:	
9 Board's Actions on Old Growth,	
10 Oak Woodland Destruction, and	
11 Clear-cutting	2
12 Board Runs Department, or Vice-versa	3
13 Board's Awareness of Letter Sent to	
14 Humboldt County Board of Supervisors	3
15 Coho Salmon Problem	4
16 Efforts to Prevent Spread of	
17 Sudden Oak Death	7
18 Bark Beetle Infestations	9
19 Questions by SENATOR KARNETTE re:	
20 Watershed Plans	9
21 Questions by SENATOR KNIGHT re:	
22 Meaning of "Fire Exclusion"	11
23 Efforts to Prevent Fire in Areas of	
24 Big Bear and Lake Arrowhead	12
25 Healthy Forest Initiative	13
26 <u>Witnesses in Support:</u>	
27 WILLIAM KEYE	
28 California Licensed Foresters Association	13

1	MELINDA TERRY California Forestry Association	14
2	MARK PAWLICKI Simpson Timber Company	14
3	<u>Witness in Opposition:</u>	
4	PAUL MASON Sierra Club California	14
5	Motion to Confirm	16
6	Committee Action	16
7	SUSAN BRITTING, Ph.D., Member State Board of Forestry and Fire Protection	17
8	Goals and Objectives	17
9	Questions by CHAIRMAN BURTON re:	
10	Clear-cutting	18
11	Awareness of Department's Letter to Humboldt County Board of Supervisors	18
12	Sudden Oak Death and Bark Beetle Infestation	19
13	Questions by SENATOR KARNETTE re:	
14	Relationship between Clear-cutting And Watershed Health	20
15	<u>Witness with Concerns:</u>	
16	ALLEN AMARO Veterans for Better Government	21
17	<u>Witnesses in Support:</u>	
18	VERN GOEHRING California Native Plant Society	22
19	PAUL MASON Sierra Club California	23
20		

1	Motion to Confirm	23
2	Committee Action	23
3	ANDREW "KIRK" MARCKWALD, Member	
4	State Board of Forestry and Fire Protection	24
5	Statement of Goals	24
6	Questions by CHAIRMAN BURTON re:	
7	Awareness of Letter Sent by Department to	
8	Humboldt County Board of Supervisors	25
9	Sudden Oak Death and Bark Beetle	
10	Infestation	26
11	Need for Research Money for	
12	Task Force on Sudden Oak Death	27
13	Level of Emergency in Lake Arrowhead	
14	Region	28
15	Questions by SENATOR JOHNSON re:	
16	Sudden Oak Death Task Force	29
17	Knowledge of Cause	30
18	Commitment to Put Disabled Veteran Owned	
19	Businesses on Agenda for Discussion	31
20	Questions by CHAIRMAN BURTON re:	
21	Apportionment of Sudden Oak Death Task	
22	Force Monies	32
23	Effect Outside of California	32
24	Questions by SENATOR KNIGHT re:	
25	Dutch Elm Disease	32
26	Familiarity with Michigan's Policies	33
27		
28		

1 Witness in Support:

2 PAUL MASON
3 Sierra Club California 34

4 Motion to Confirm 35

5 Committee Action 35

6 DAVID NAWI, Member
7 State Board of Forestry and Fire Protection 35

8 Statement of Goals 36

9 Questions by CHAIRMAN BURTON re:

10 Board's Role in Protecting
11 Coho Salmon 36

12 Duration of Board's Existence 37

13 Number of Board Members 38

14 Response by MR. MARCKWALD 39

15 Questions by SENATOR JOHNSON re:

16 Commitment to Disabled Veteran Owned
17 Businesses 40

18 Questions by SENATOR KNIGHT re:

19 Board's Obligation to Timber Industry 40

20 Clear-cutting in Checkerboard Manner 41

21 Questions by SENATOR KARNETTE re:

22 Watershed Study 42

23 Witness in Support:

25 PAUL MASON
26 Sierra Club California 43

27 Motion to Confirm 44

28 Committee Action 44

1	MAELEY TOM, Member State Personnel Board	44
2	Background and Experience	44
3	Questions by SENATOR KARNETTE re:	
4	Lack of Sufficient Personnel with Technical Computer Knowledge	45
5	<u>Witnesses in Support:</u>	
6	PERRY KENNY, President California State Employees Association	47
7	ED PEREZ, Chair Asian Pacific Islander Committee SEIU Local 1000	47
8	ELAINE CHIAO Asian Pacific State Employees Association	47
9	Motion to Confirm	48
10	Committee Action	48
11	Termination of Proceedings	48
12	Certificate of Reporter	49
13	Addendum: Appointees' Responses to Committee's Questions	
14	Committee's Questions	50
15	MARK BOSETTI	52
16	SUSAN BRITTING	56
17	ANDREW "KIRK" MARCKWALD	62
18	DAVID NAWI	66
19	MAELEY TOM	70
20		
21		
22		
23		
24		
25		
26		
27		
28		



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--ooOoo--

3 CHAIRMAN BURTON: Governor's appointees, Mark
4 Bosetti, State Board of Forestry and Fire Protection.

5 Welcome.

6 MR. BOSETTI: Thank you.

7 CHAIRMAN BURTON: Go ahead.

8 MR. BOSETTI: I'm happy to be here today.

9 I've submitted responses to the questions posed
10 of me by the Rules Committee staff, and I hope that you've had a
11 chance to read it.

12 I'd like to basically give you a brief summary of
13 my goals as far as participation as a member on the Board of
14 Forestry and Fire Protection, and then open it to any questions
15 you may have of me.

16 My primary goal as a member of the Board of
17 Forestry is to ensure that the policies and regulations adopted
18 by the Board do the following things: provide a climate that
19 encourages landowners to maintain or increase their investment
20 in timberlands; enhance or restore the productivity of
21 timberlands; substantially lessen or avoid significant adverse
22 impacts to the environment; and allow for site-specific
23 solutions to be implemented.

24 I have no other statement at the present. I'd be
25 willing to answer any questions you may have.

26 CHAIRMAN BURTON: When Chairman Dixon was
27 confirmed, he said he would put three policy items before the
28 Board dealing with old growth, clear-cutting and oak woodland

1 destruction.

2 Has the Board taken action on any of them? Have
3 they discussed any of those three issues?

4 MR. BOSETTI: Yes, they have, Senator Burton.

5 The process of discussing and developing some
6 action has taken place. In the response I have written to you,
7 I have to clarify that.

8 I had written this response after the last
9 meeting of the Board, and I had to leave the last Board meeting
10 prior to the committee reports.

11 The specific initiatives that Chairman Dixon had
12 laid out had been referred to the Board's Policy Committee. At
13 the last Board meeting, the Policy Committee brought forward to
14 the full Board for consideration a process for evaluation of
15 those three initiatives.

16 The Board had decided at that time to begin a
17 series of public workshops and dialogue on the three
18 initiatives, first beginning next week in Sonora at our June
19 meeting. And the first issue identified for discussion is the
20 oak woodlands.

21 The second initiative will be followed up at the
22 July meeting, and my understanding is that initiative that will
23 be discussed there will be clear-cutting.

24 And then the third initiative will have the same
25 public dialogue, and that's the old growth issue. I believe
26 that will be taken up at the August meeting.

27 Out of those public meetings we hope to discern
28 the sentiment and comments from a variety of interested public.

1 A report will be prepared by the Department, and then it is
2 hoped at that time that the Board will be able to provide
3 direction as to how to proceed with each of those three issues.

4 CHAIRMAN BURTON: Now, does the Board run the
5 Department, or does the Department run the Board? I'm not sure
6 how that works. In theory, you run them, but they're there
7 day-to-day, so they run themselves or what?

8 MR. BOSETTI: The Board sits in a position of
9 defining the policy and direction for the Department. And we
10 try to provide guidance on the issues of fire protection, and
11 the forest practice rules and regulations, of course, we pass,
12 and the Department carries out the charge of implementing those
13 directions and guidance.

14 CHAIRMAN BURTON: Was the Board aware of the
15 letter that the Department sent concerning the Humboldt County
16 Board of Supervisors when they were considering hiring outside
17 counsel?

18 MR. BOSETTI: Senator, I wasn't aware of that
19 letter being sent.

20 CHAIRMAN BURTON: Do you know any members of the
21 Board that were?

22 MR. BOSETTI: I can't speak for any of the other
23 members. I'm not certain.

24 CHAIRMAN BURTON: You don't know?

25 MR. BOSETTI: No.

26 CHAIRMAN BURTON: Do you think that's something
27 that they ought to share with the Board before they do it, or
28 get clearance?

1 MR. BOSETTI: Personal feeling is yes.

2 CHAIRMAN BURTON: Did anybody after the fact on
3 the Board bring them in and ask them exactly what they were
4 doing and why?

5 MR. BOSETTI: To my knowledge, no.

6 CHAIRMAN BURTON: Do you think it would make
7 sense for the Board to adopt a policy that before the Department
8 goes off in frolic of its own, that they either clear this stuff
9 with the Board or take direction?

10 MR. BOSETTI: Well, I think it's important that
11 the Board is informed of anything of that magnitude that the
12 Department would undertake.

13 CHAIRMAN BURTON: Prior to the action?

14 MR. BOSETTI: Prior to the action, yes, sir.

15 CHAIRMAN BURTON: So, what was the answer to my
16 question?

17 MR. BOSETTI: The answer to your question, I
18 think the Board should look at adopting some policy.

19 CHAIRMAN BURTON: Then it's clear what they would
20 do and what not.

21 What are you all doing about the coho salmon
22 problem?

23 MR. BOSETTI: Currently, as you're aware, the
24 Board is still working with some resolution on the threatened
25 and impaired rules that were passed three years ago,
26 three-and-a-half years ago. Those rules are still in
27 place. There's a sunset provision in those rules that will come
28 due here in January. I fully believe that the Board will pursue

1 action to extend those rules while seeking some other solutions
2 as the Board at that time committed to, which was mainly to
3 develop some site-specific basis for evaluation of the potential
4 impacts to coho.

5 CHAIRMAN BURTON: So, there were rules put in
6 place three years ago, and they either weren't implemented or
7 they weren't worth anything?

8 MR. BOSETTI: No, they're implemented. They're
9 in place right now. They have been for the last three years.

10 CHAIRMAN BURTON: The fish keep dying, so the
11 rules may have been not stringent enough or what?

12 MR. BOSETTI: I don't necessarily think that's
13 the case. I think there's a lot more in play relative to the
14 fish's specific life cycles. We have within the rules
15 strengthened the buffer widths around stream courses in streams
16 that are inhabited by coho.

17 And I think the general life cycle of the fish, I
18 think last year, for example, was one of the best fish run years
19 of record in recent past.

20 CHAIRMAN BURTON: If you make a rule like it's
21 got a three-year sunset, right, or whatever, a rule with a
22 sunset like this one.

23 MR. BOSETTI: Yes.

24 CHAIRMAN BURTON: If the Board desires to, they
25 could go in. They don't have to wait for the three years to run
26 its course. If they think the rule was either too stringent, or
27 too lax, or doesn't make any sense, they don't have to wait for
28 a three-year period to do something on it.

1 MR. BOSETTI: Oh, no. The rule has been up for
2 readoption two times since the first passage of the rules that
3 I'm aware of. We passed it with a sunset provision.

4 CHAIRMAN BURTON: Some would say, and I couldn't
5 because I'm not that sure, but the rule's a little bit weak on
6 its ability to protect the coho.

7 MR. BOSETTI: We hear those comments, but there's
8 -- my belief is that I think it provides an ample amount of
9 certainty at this point in time, given what we know about the
10 fish's life cycle.

11 CHAIRMAN BURTON: It provides certainty, but you
12 can provide certainty we'll all be dead in a week, too..

13 I mean, I think they keep diminishing, and if
14 these are the same rules that were adopted three cycles ago and
15 reaffirmed, it would lead me, not knowing much, to think that
16 probably the rules maybe leave a little bit to be desired.

17 MR. BOSETTI: I think that a three-year term of
18 evaluation of fish's life cycle and the effects --

19 CHAIRMAN BURTON: You said that the rules had
20 been readopted three times, or at least I thought I heard that.

21 MR. BOSETTI: Yeah, we passed them back in I
22 believe it was 2000. And then --

23 CHAIRMAN BURTON: So that's the first time?

24 MR. BOSETTI: That was the first time the rules
25 were passed.

26 CHAIRMAN BURTON: I misheard. I thought that it
27 had like three, three-year --

28 MR. BOSETTI: No, no, I'm sorry.

1 CHAIRMAN BURTON: I apologize then.

2 I'm sure the answer to this is yes, about whether
3 or not the federal government could help more about the Sudden
4 Oak Death. I guess answer is, why not?

5 Are we doing enough with the Sudden Oak to
6 prevent the spread of Sudden Oak Death? We had the problem,
7 although it was a different industry, but it was with the wine
8 industry with the glassy wing sharpshooter, or earlier going
9 back years, with the Med fly, and it was like a big deal.

10 With Sudden Oak Death, I guess it doesn't impact
11 industry or something to that extent, I don't know.

12 What are you all doing about that?

13 MR. BOSETTI: The Board has been keenly aware of
14 the Sudden Oak Death Issue and the problems associated with it.
15 The science is evolving relatively quickly.

16 One thing is, we're learning a lot, but we still
17 don't know a lot about its origin, its methods of spread, and
18 those types of things.

19 I think the biggest emphasis right now, it is
20 important to be funneling dollars into the research end of it so
21 we learn more about the problem and how to potentially correct
22 it.

23 But then the other two avenues where expenditures
24 are necessary and are currently taking place are in the hazard
25 abatement, dealing with the dead trees, making sure that the
26 hazard's abated, both to property and to the potential fuel
27 loading situations that occur.

28 And public awareness is another big thing, I

1 think, that is a part of the solution right now.

2 CHAIRMAN BURTON: What is the economic downside
3 to Sudden Oak Death? The Med fly was a big deal to the ag.
4 industry; the sharpshooter was a big deal basically to ag, but I
5 guess wine and maybe even table groups.

6 Is there an economic downside?

7 MR. BOSETTI: Well, directly relative to the use
8 of the oaks affected here in the state, the biggest downside is
9 probably aesthetics and the habitat related to those oaks.

10 CHAIRMAN BURTON: I guess if it was a big
11 economic loss to the timber industry, then we'd probably see
12 more action somewhere. It's more of a habitat, aesthetic,
13 whatever?

14 MR. BOSETTI: The habitat issue is a big one.
15 There are implications with regard to the timber industry
16 potentially. There are limitations on the harvesting of forest
17 crops in the areas affected by Sudden Oak Death, so the industry
18 is affected by that.

19 CHAIRMAN BURTON: Sudden Oak, does whatever
20 affects them, can it jump over to other types of trees, or it's
21 just limited to oak? Have they figured that out yet?

22 MR. BOSETTI: There's a whole variety of hosts.
23 There is some research that indicates that Sudden Oak does
24 reside in the younger saplings of redwood and perhaps Douglas
25 fir.

26 But as far as a whole series of mortality issues
27 with those species, I don't think that's been proven out yet,
28 and I don't believe that's --

1 CHAIRMAN BURTON: How about the bark beetle
2 infestations?

3 MR. BOSETTI: Speaking specifically of the
4 infestations at Lake Arrowhead, I think that's a serious,
5 serious problem. We have a long history of fire exclusion in
6 that area, and a consequent build up of significant fuel loads,
7 coupled with a drought, creating an epidemic of bug
8 infestation, something on the magnitude that I can't ever
9 remember seeing.

10 As far as the steps that are being taken right
11 now, I know the federal government has put in a great deal of
12 money and time to figure out how to abate the hazard. I think
13 the first emphasis right now has been to deal with the safety
14 aspects of getting people in and out of the area in the event of
15 a fire: clearing the dead trees around structures; trying to
16 dispose of what quantity of the dead fuel that they can. But
17 they're fairly significantly limited in infrastructure available
18 to remove or dispose of that material. It's a long ways to
19 transport logs or chip product out of that material. So, it's
20 definitely a problem.

21 CHAIRMAN BURTON: Senator Johnson.

22 SENATOR JOHNSON: No questions.

23 CHAIRMAN BURTON: Senator Karnette.

24 SENATOR KARNETTE: I'm interested in how the
25 Board proposes to handle the watershed issue of having all the
26 companies and all the different governing groups working
27 together to have a watershed plan that would apply to the whole
28 area.

1 MR. BOSETTI: The watershed issue is one that the
2 Board has worked on at least as long as I've been on the Board,
3 which has been the last three years.

4 The Department had undertaken a series of
5 specific watershed evaluations on the Mattole. The other names
6 escape me at this time.

7 We're trying to utilize those as a basis for
8 which to start to determine how to proceed. We've had a
9 presentation and had an opportunity to review the Dunne Report,
10 which is often referred to as a pretty progressive means of
11 looking at the overall accumulative affect analysis.

12 SENATOR KARNETTE: Is there any kind of a
13 timeline? When do you expect to have something that would be
14 operational, a plan?

15 MR. BOSETTI: I really couldn't offer you a
16 timeline on it. I know we're working on it. It's something
17 that with the regulatory and rule-making process that we're
18 involved in, it can at times be painfully slow.

19 SENATOR KARNETTE: Well, if we could speed it up,
20 it would be nice.

21 Is there anything that the Board can do to speed
22 it up from your perspective?

23 MR. BOSETTI: Well, I think with the myriad --
24 the wide variety of issues that are focused in front of us, you
25 know, we can't -- just spending more time on them and having
26 more staff time to help develop certain issues would be helpful.
27 It's a matter of commitment and focus.

28 SENATOR KARNETTE: The industry, I would hope,

1 would be committed because it's important to them, I would
2 think.

3 MR. BOSETTI: The industry has been committed.
4 One of the aspects of the question Senator Burton asked about,
5 the coho salmon, the threatened and impaired rule package, the
6 Board had adopted another package that was parallel to that
7 which was called the Interim Watershed Mitigation Addendum, and
8 it was a more focused review of the watershed effects and
9 identifying potential sites in need of mitigation. And so,
10 we're hoping to utilize that as a method.

11 The Board has been supportive of trying to
12 develop a pilot project that would utilize the Dunne Report as
13 the basis for evaluation. It's important to get started on a
14 particular watershed, I think, and then utilize that as a
15 potential template for a wider scale application.

16 SENATOR KARNETTE: I would agree. I hope this
17 can be pursued because it's really important. The last few
18 times we've talked to people about this area of forestry, it's
19 always a problem. I mean, I don't know why groups don't want to
20 get together to resolve it.

21 I know you need more staff and everything, but
22 everybody says that. I don't know what the answer is, but if
23 you can hurry it up, I think it would be smart.

24 CHAIRMAN BURTON: Senator Knight.

25 SENATOR KNIGHT: What did you mean by fire
26 exclusion?

27 MR. BOSETTI: I think when we began --

28 SENATOR KNIGHT: No campfires or things like

1 that?

2 MR. BOSETTI: When we began the process of fire
3 suppression years ago, where when a fire -- we developed the
4 firefighting system to extinguish fires. Prior to that, you
5 know, things burned on their natural course, and the
6 accumulation of fuels was taken care of in that process. But
7 we've been very successful at excluding fire from the landscape
8 with our fire suppression efforts.

9 SENATOR KNIGHT: The San Bernardino area of Big
10 Bear, Arrowhead, that's a significant area that is really
11 susceptible to a devastating fire. What are you doing in order
12 to prevent that?

13 MR. BOSETTI: Well, as I mentioned earlier, the
14 bulk of the land in that area, I think the estimate that I
15 recall was 350,000 acres that are affected by the bark beetle
16 epidemic.

17 With an epidemic of that size, and the amount of
18 fuel load that's present, you have to take it on in a fairly
19 systematic method. I think the first thing you have to do is
20 focus on clearing your safety routes, the means of getting into
21 and out of the area, and then from there, trying to work on
22 places that you can stage residents in the area in the event of
23 a fire. So, public safety is the first thing that you have to
24 focus on.

25 The magnitude of that problem is something that's
26 going to take years, I think, to actually get ahead of. I don't
27 know that you ever will get ahead of it.

28 SENATOR KNIGHT: Is there any kind of plan in

1 being that you're working on?

2 MR. BOSETTI: Well, the bulk of that property,
3 the ownership there is owned by the federal government. And
4 we've been -- the Board has been kept apprised of the
5 situation. And the federal government has taken the lead in
6 trying to get dollars and projects under way there to help deal
7 with the problem.

8 SENATOR KNIGHT: The latest proposal by President
9 Bush, is that beginning to take effect?

10 MR. BOSETTI: Well, I think the process was
11 started well before the Healthy Forest initiative in that
12 particular area, but certain aspects of that may help. .

13 But given the size and magnitude of that
14 particular instance, I think people have been moving quite
15 rapidly to try to do something.

16 There's a lot of money. I heard one estimate
17 that it may take up to 300 million dollars to ultimately get
18 ahead of the amount of fuel load and the problem that's in place
19 there right now.

20 CHAIRMAN BURTON: Do you have your family here?

21 MR. BOSETTI: My wife, yes.

22 CHAIRMAN BURTON: Would you like to introduce
23 her, please?

24 MR. BOSETTI: My wife Sandy.

25 CHAIRMAN BURTON: Witnesses in support, briefly.

26 MR. KEYE: Yes, my name is Bill Keye,
27 representing the California Licensed Foresters Association.

28 We are strongly in support of Mark Bosetti's

1 continuing to serve on the Board as the forest products industry
2 representative.

3 MS. TERRY: Melinda Terry, California Forestry
4 Association.

5 We, too, are in strong support. Mr. Bosetti is a
6 forester for one of our member companies, and we think he is
7 doing a good job on the Board and hope you think so as well and
8 will support his confirmation.

9 Thank you.

10 MR. PAWLICKI: Good afternoon, Mr. Chairman and
11 Members, Mark Pawlicki representing Simpson Timber Company.

12 We think Mr. Bosetti is a thoughtful, reasoned
13 person. He represents the industry's views very well on the
14 Board, and I think he has done a very good job for the last
15 three years. We'd like to see him continue on the Board.

16 Thank you.

17 CHAIRMAN BURTON: Witnesses in opposition?

18 MR. MASON: Good morning, Mr. Chairman, Members
19 of the Committee. Paul Mason for Sierra Club California.

20 I'd have to say just right off the top that
21 Mr. Bosetti does occupy an industry seat, so we don't expect him
22 to be one of the visionaries on the Board trying to increase
23 environmental protections. You know, just sort of the way these
24 things tend to play themselves out.

25 In my observations of the Board, I would say that
26 I don't think Mr. Bosetti shares my concern for the magnitude of
27 some of the problems, such as coho salmon, as you alluded to
28 earlier, that there really is a problem there. And the steps

1 that the Board has taken over the last few years since
2 Mr. Bosetti has been one of the members have been begrudging,
3 and incremental, and generally inadequate, such as the rules
4 that we talked about -- or you talked about earlier that have
5 been in effect for about three years, those threatened and
6 impaired rules.

7 The National Marine Fishery Service, now known as
8 NOAA Fisheries, the federal fisheries agency that listed them as
9 endangered, has said repeatedly that those rules are
10 inadequate.

11 We're still stuck in the situation where we go
12 through this tortured process of extending those rules yet
13 again, and it always seems to be at a glacial pace. You know,
14 we're coming on half way through the year, and they haven't even
15 noticed those rules for extension yet.

16 I do agree that they probably will be extended.
17 It would be nice if they were extended for a number of years so
18 the Board can turn their attention to other more pressing
19 issues.

20 The place we have seen leadership from
21 Mr. Bosetti has been on rule packages like the Interim Watershed
22 Mitigation Addendum, which the primary purpose of that would be
23 to allow landowners to take less protective measures. I mean,
24 the whole point there is, if you have this standard for
25 protecting coho, which the federal government has already said
26 is inadequate, that this other process would let you do less to
27 protect the coho. So, that's sort of the situation that we see
28 here. That said, that's sort of what we expect.

1 It would be nice if the Governor would make some
2 appointment that didn't necessarily represent the largest
3 aspects of the industry, if we appointed somebody who was from a
4 certified company, a Forest Stewardship Council certified
5 company, a small landowner. I think there's other ways you
6 could fill that nitch.

7 But I would have to call ours relatively tepid
8 opposition to Mr. Bosetti.

9 SENATOR JOHNSON: Move the nomination.

10 CHAIRMAN BURTON: Is there anybody else in
11 opposition?

12 Call the roll.

13 SECRETARY WEBB: Senator Karnette.

14 SENATOR KARNETTE: Aye.

15 SECRETARY WEBB: Karnette Aye. Senator Knight.

16 SENATOR KNIGHT: Aye.

17 SECRETARY WEBB: Knight Aye. Senator Johnson.

18 SENATOR JOHNSON: Aye.

19 SECRETARY WEBB: Johnson Aye. Senator Burton.

20 CHAIRMAN BURTON: Aye.

21 SECRETARY WEBB: Burton Aye. Four to zero.

22 CHAIRMAN BURTON: Congratulations to you.

23 MR. BOSETTI: Thank you, sir.

24 CHAIRMAN BURTON: And at least I tend to cut a
25 lot more slack to the industry representatives because they're
26 representing the industry, but I think industry, in that
27 industry, ought to start being a little bit more enlightened.
28 And I think you could help bring them there, because I think,

1 clearly, knowing what little I know, but whatever they're doing
2 to protect the coho salmon, I would not want them protecting my
3 grandson.

4 I wish you well, but I think you can help push
5 them, because sooner or later, I'm afraid there could well be a
6 backlash against the whole industry, the responsible ones as
7 well as the irresponsible ones. And every year there are groups
8 that want to go to the ballot with an initiative, and they may
9 pass or may not pass, but they become a real pain in the neck to
10 us.

11 So, good luck, God speed, and God bless you.

12 MR. BOSETTI: Thank you.

13 CHAIRMAN BURTON: Susan Britting, Ph.D.

14 DR. BRITTING: Mr. Chairman, Members of the
15 Committee, I'm pleased to be here before you today to discuss my
16 hopeful confirmation to the Board of Forestry.

17 I was appointed in October of 2002, so I've
18 served for now about six months.

19 Let's see, I'd say my overarching goal as a
20 member of the Board would be to seek species and ecosystem
21 protection, while seeing that we also derive economic use of the
22 resources. I think that's an important perspective to bring to
23 the Board.

24 Right now I sit on the Forest Management
25 Committee, and it's a committee that develops rules. And we're
26 now working on some rules that are drawing attention to oak
27 woodland management, and also aspects of clear-cutting that may
28 be of interest to you.

1 I think beyond that, I invite questions.

2 CHAIRMAN BURTON: What are you doing about
3 clear-cutting?

4 DR. BRITTING: In the Forest Practices Committee,
5 right now we're discussing a variation on clear-cutting that has
6 to do with retaining structures and elements on the landscape.
7 So, not 100 percent clearing of the land, but rather something
8 called variable retention. So, it's an opportunity to retain
9 important elements for habitat: large trees, snags, structure
10 within cleared regions. So, we're exploring ways to develop
11 that methodology in a way that is more feasible for industry and
12 others to apply to the landscape as well as deriving benefits
13 for habitat.

14 CHAIRMAN BURTON: Were you aware of the
15 Department sending a letter to the Humboldt Board?

16 DR. BRITTING: No, I wasn't.

17 CHAIRMAN BURTON: To your knowledge, was anybody
18 on the Board?

19 DR. BRITTING: I didn't hear -- I didn't have a
20 conversation that indicated anybody else knew.

21 CHAIRMAN BURTON: Well, I would really hope that
22 both of you, when you go back to the Board, as well as Mr.
23 Marckwald, that you tell the Chairman that we would like to have
24 them find out under what authority these people sent that
25 letter, and that they ought to be not making policy. They're
26 supposed to be implementing policy.

27 If it was something that was a policy that the
28 Board did, at least it would have been known in public before

1 the letter was sent. But the letter well could have been
2 written by somebody working for the timber companies. So, I
3 don't think that's what we're paying these people for.

4 DR. BRITTING: I'm agreeable to raising the
5 issue. I think it's important --

6 CHAIRMAN BURTON: Just as a matter of policy, you
7 know, whether it's good or whether it's bad.

8 We sort of frown upon our staff if they send
9 something out, and it's in the press because it's kind of
10 speaking in our name, and whether it might be something I agree
11 with, but it's something the other Members of the Committee
12 don't, it's not quite -- it's not their goal. They're supposed
13 work at the direction.

14 I think you set the policy. They implement it.
15 I'd just like to know who asked them to send the letter, and why
16 they sent it, and what they were thinking about. And hopefully
17 they would have Civil Service protection there, because
18 otherwise there's an at-will employee.

19 Do you want to comment on Sudden Oak or about the
20 bark beetle infestations at all?

21 DR. BRITTING: On Sudden Oak, I think there's
22 some reality to possibly the level of attention that is given
23 based on, you know, not a strong connection to commercial use.
24 That's a cultural, social reality as well as a political one.

25 I actually have learned a fair amount from the
26 regular reporting that we get from our group that works with
27 other federal agencies and local agencies on that issue. And I
28 think the Board has been very supportive of whatever budget that

1 group has identified as important to achieving their goals and
2 furthering research on Sudden Oak Death. So, I think those are
3 positive things.

4 As to the Lake Arrowhead issue, that's a very sad
5 case down in the south. Long-term drought and some crowding of
6 trees leads to severe die-off. I think it is correct to spend a
7 lot of energy and time and focus in that area to improve the
8 health and safety of the people that live there. So that,
9 because of the mixed ownership, has to be a cooperative effort.

10 I've actually been really pleased to hear reports
11 from the Department and actually report outs from regional
12 forester, Jack Blackwell, the amount of attention that has been
13 given to that area. So, I find that encouraging in light of the
14 a very sad situation.

15 CHAIRMAN BURTON: Actually, I hear more about the
16 Sudden Oak Death in Marin County than I hear anywhere else. Of
17 course, there it's a matter of, I guess, aesthetics or whatever
18 as opposed to commercial.

19 Senator Johnson.

20 SENATOR JOHNSON: No questions.

21 CHAIRMAN BURTON: Senator Knight, no questions.
22 Senator Karnette.

23 SENATOR KARNETTE: The same question, how does
24 clear-cutting relate to the forest taking, you know, the
25 watershed? What's the relationship?

26 DR. BRITTING: Between clear-cutting and
27 watershed health?

28 SENATOR KARNETTE: Yes, right.

1 DR. BRITTING: It can vary. The effects of
2 clear-cutting, I think, can vary significantly, depending on the
3 watershed and the intensity. And, you know, those I think are
4 issues that are well suited for the Board to consider.

5 In terms of what it does to the landscape, there
6 could be effects on water quality. We've seen, you know, issues
7 related to that in the North Coast. It can also affect just the
8 way the landscape is, and development of the forest over time.
9 So, I think those are all issues that are very important to
10 consider when establishing, you know, the right level of
11 treatment for a given watershed.

12 So, there is some balance, I believe.

13 SENATOR KARNETTE: Thank you.

14 CHAIRMAN BURTON: Witnesses in support?

15 MR. AMARO: Mr. Chair, Members of the Committee,
16 thank you, Senator Burton.

17 I am here in neither support or opposition, just
18 as a voice of concern.

19 My name is Allen Amaro. I'm with the Veterans
20 for Better Government. I'm also a Certified Disabled Veteran
21 Owned Business.

22 We are here only to ask that the members being
23 confirmed give us the courtesy in the very near future of
24 addressing them to our concerns as Disabled Veteran Owned
25 Businesses.

26 Thank you.

27 SENATOR JOHNSON: I assume that applies not only
28 to this nominee, but all?

1 MR. AMARO: Yes, to Mr. Bosetti, Ms. Britting --

2 CHAIRMAN BURTON: The whole Commission?

3 MR. AMARO: Yes.

4 CHAIRMAN BURTON: To the four of you here,
5 probably that's all there are on the Commission anyways.

6 I would think you would take that back. I think
7 they could find room for you on the agenda.

8 MR. AMARO: Thank you very much for your time.

9 MR. GOEHRING: Mr. Chairman and Members, I'm
10 Vern Goehring, representing the California Native Plant Society.

11 I delivered a letter of support signed by the
12 Executive Director of the organization earlier this morning, so
13 I just want to make a few brief comments from that letter in
14 case you haven't had chance to read it.

15 All 10,000 members of the Native Plant Society
16 enthusiastically support Dr. Britting in this appointment, and
17 they all, 10,000, wanted to be here this morning, but I told
18 them that wouldn't work very well.

19 You're well aware of her technical and her
20 professional qualifications for this position, but I just wanted
21 to comment briefly about her outstanding leadership skills,
22 which she frequently demonstrated to us in her years as a Board
23 member and President of the Native Plant Society. She guided
24 the organization with foresight, sensitivity, and persistence.
25 We're confident that Dr. Britting will demonstrate these same
26 leadership skills in her work on the Board of Forestry,
27 strategically confronting challenges and sensitively moving
28 forward with solutions.

1 While Dr. Britting will be stepping down from her
2 official role with the Native Plant Society this year, we are
3 pleased to temporarily loan her to the Board of Forestry, and we
4 encourage your support.

5 Thank you.

6 MR. MASON: Good afternoon. Paul Mason for
7 Sierra Club California, also in strong support of Dr. Britting.

8 It's nice to see an appointee with, you know,
9 such robust technical qualifications and a good, solid
10 understanding of forestry here in California. We're strongly in
11 support.

12 CHAIRMAN BURTON: Do you have family here,
13 Doctor?

14 DR. BRITTING: No.

15 CHAIRMAN BURTON: Any witnesses in opposition?
16 Move the nomination.

17 SECRETARY WEBB: Senator Karnette.

18 SENATOR KARNETTE: Aye.

19 SECRETARY WEBB: Karnette Aye. Senator Knight.

20 SENATOR KNIGHT: Aye.

21 SECRETARY WEBB: Knight Aye. Senator Johnson.

22 SENATOR JOHNSON: Aye.

23 SECRETARY WEBB: Johnson Aye. Senator Burton.

24 CHAIRMAN BURTON: Aye.

25 SECRETARY WEBB: Burton Aye. Four to zero.

26 CHAIRMAN BURTON: Congratulations, Doctor.

27 Andrew Marckwald.

28 MR. MARCKWALD: Good afternoon, Mr. Chairman and

1 Members. Thanks for the opportunity to be here today.

2 My name is Kirk Marckwald. I'm nominated as a
3 public member for a second term. I laid out to the Committee
4 what my goals were for my term.

5 Basically, I'm committed to working with all
6 interests to fashion rules that protect both the economic and
7 environmental productivity of California's timber resources.

8 I do think that these, the working landscape for
9 forestry is essential to keep intact. I think that subdivisions
10 are as great a threat to the coho as sediment that are coming
11 off of timber harvest management plans in some cases and public
12 roads. So really, we need to look at this as a system.

13 And the Board's rules must be clear, and they
14 must be vigorously enforced if we are going to in fact protect
15 the fish, or the soil, and the plant and animal species in the
16 beneficial uses of water.

17 I'm not satisfied that we've done a perfect job
18 or the best job in my first term. I'm very pleased with both
19 the Governor's reappointment and new appointments.

20 And I think that the commitment that the Chair of
21 the Board made to you, Senator Burton, he took very seriously on
22 those three issues. As the Vice Chair of the Board, I'm trying
23 to help move them along and ensure that these colloquies are
24 well attended, the issues are fairly presented, and if we have
25 the authority, that we move forward and address those issues.
26 And if there are areas that we don't have the authority, we
27 bring that back to the Legislature and say, "Here's what the
28 situation is."

1 So with that, I would be happy to answer any
2 questions the Committee might have.

3 CHAIRMAN BURTON: Were you aware of the letter
4 that the staff sent to the Humboldt County Board of Supervisors?

5 MR. MARCKWALD: I was not aware, Chairman Burton.
6 I did inquire of the Department about the letter. The Director,
7 in fact, then did fax me the letter. It was brought to my
8 attention by members of your staff.

9 And I think the only -- there's no -- there's
10 certainly no debate that the letter was sent without, I think,
11 anybody on the Board knowing about it.

12 The subject of the matter, of the letter, or at
13 least the letter I was sent, has nothing to do with the
14 retaining of the outside counsel issue. It does talk
15 specifically about the issues raised by the litigation.

16 It was sent apparently at the request of the
17 Chairman of Board of Supervisors, Jimmy Smith, who had called
18 the Director and asked her what was her point of view on these
19 various points of view, and she did respond in kind.

20 So, the subject matter of the letter may be a
21 little bit different, but the process is, I believe, as you've
22 laid it out before.

23 CHAIRMAN BURTON: Well, I think that the subject
24 of the letter, although it didn't say whether to hire or not to
25 hire, kind of said there isn't any problem. And then if you
26 read, "There isn't any problem," why would we hire?

27 There was an intent in asking for the letter.
28 There was an intent in sending the letter, which you know,

1 again, if the Board en banc, so to speak, decided to do that,
2 you're the people that do it. In other words, whoever sent the
3 letter, he doesn't have to ever come and answer to us.

4 So, I think it just ought to be clear whatever
5 the policy is. And if you want to give a blank check to
6 somebody who works for the Department, that's fine, too.

7 MR. MARCKWALD: I agree with you.

8 CHAIRMAN BURTON: Do you want to comment both on
9 the oaks and the bark beetles?

10 MR. MARCKWALD: The Sudden Oak issue, I think, my
11 colleagues have covered.

12 We have asked on several occasions that the task
13 force which was -- it's a state-federal task force that has been
14 managed by the Department, and we have repeatedly asked if there
15 is need for any members of the Board to give signals, both to
16 the administration or to Washington about additional economic
17 resources, and charged them to always keep us informed to do
18 that. And as recently as our last meeting, we had that same
19 discussion.

20 I think your observations earlier about what's
21 different between this and the glassy winged sharpshooter is
22 exactly right. This is affecting individuals. It's probably
23 affecting their home values. It's certainly affecting their
24 aesthetics, and there's certainly some safety, public safety
25 related things of trees along public roads.

26 But you don't hear the hue and cry because it's
27 not focused on one economic force.

28 My sense is, and I'm not scientist by any means,

1 but my sense is, the scientists are still working very hard to
2 really figure out what one would do in order to effectively stop
3 the spread. And right now, it's really not that, and as
4 Mr. Bosetti said, it's basically cleanup and containment and
5 safety management, unfortunately.

6 CHAIRMAN BURTON: You said something at the
7 beginning of this that the Board has asked whatever this group
8 is to let the Board know if they thought there was a need to ask
9 the state or the feds for more money?

10 MR. MARCKWALD: We get a monthly report --

11 CHAIRMAN BURTON: Of course, we all know that
12 money is not answer to every problem.

13 Did they ever say, "Yeah, we could probably?"

14 I would assume that if this is a problem, which I
15 think it is, and I don't know where it is in the level of
16 priorities, but I would assume there's a need for more money for
17 research to find out, because you don't know whether it's going
18 to start jumping from oak trees to redwoods to cedar trees to
19 chestnut trees.

20 MR. MARCKWALD: And I know in the last session of
21 the Legislature, we did write the Governor to augment the
22 budget. We did write the Members of the Budget Subcommittees to
23 look favorably on the proposal. I can't remember who was
24 carrying the bill last year to do that, and we had the same
25 conversation with them, with the Department's task force last
26 week.

27 I think the Arrowhead issue is tragic. It is.
28 incredibly dangerous. And 350,000 acres is a lot of wood to

1 clear and make people who are living down there safe.

2 And I do believe that there's no politics getting
3 played on that issue. I think the federal managing agencies and
4 the state agencies are very focused on protecting public health
5 and safety and escape issues. At the same time it's taking down
6 the most hazardous trees that are there and finding ways to
7 dispose of them, which right now is chopping them up and burning
8 them.

9 CHAIRMAN BURTON: Is chopping not burning?

10 MR. MARCKWALD: It's, you know, a lifetime's
11 work. I mean, you'll never chop 350,000 acres. But where those
12 trees are most hazardous, they're not -- they can't be hauled
13 out of the basin for any commercial benefit. So, in fact, they
14 are being chopped and burned in place.

15 CHAIRMAN BURTON: Who would pick up the tab for
16 that, the feds? Has it risen to a level of emergency?

17 MR. MARCKWALD: It's certainly risen to a
18 level --

19 CHAIRMAN BURTON: Legally? I mean, has either
20 the supervisor, the Governor or --

21 MR. MARCKWALD: The Governor, I believe, has
22 declared a limited state of emergency. I believe the Governor
23 is down there today, and perhaps there's another proclamation
24 coming out of that.

25 I think on the federal side, in that it's mostly
26 federal, I believe that most of the emergency money's coming on
27 the federal side.

28 CHAIRMAN BURTON: Senator Johnson.

1 SENATOR JOHNSON: Thank you, Mr. Chairman.

2 I mean, I sat here for your first two colleagues,
3 and I just don't think the answers that we're hearing about the
4 Sudden Oak Death are satisfactory. I was particularly struck by
5 your saying, "each time you ask."

6 I would think it's your job to tell, not to ask,
7 some advisory committee.

8 It's spreading. It's spreading geographically,
9 and it's spreading in terms of the plant species that it
10 involves; isn't that correct?

11 MR. MARCKWALD: It has. It has spread from a few
12 counties to a handful to, I think, 12 or 14 at this point.

13 SENATOR JOHNSON: And maybe 15 different species
14 of plants?

15 MR. MARCKWALD: Yes.

16 I think the dilemma, Senator Johnson, is that the
17 scientists are really -- have never seen something like this
18 before. And the pure scientist, and the pure question of
19 isolating what this is, is something that is still not known.

20 And no one has ever said to us, "If we only had
21 more money we could move faster solving this problem of the very
22 basis of what this disease was about." I can assure you that.

23 The money that has been appropriated by this
24 Legislature and by the federal government has gone to emergency
25 remediation, and cleanup, and endangerment, and education
26 programs.

27 SENATOR JOHNSON: What do we know about the cause
28 of this today?

1 MR. MARCKWALD: It's really beyond my, you know,
2 working knowledge to tell you.

3 SENATOR JOHNSON: Sir, it's beyond my working
4 knowledge as well, but I don't serve on the Board. I would
5 think as a member, you'd be asking those questions. And I would
6 think you'd be asking them at every meeting.

7 So, I don't think it's unreasonable for me to ask
8 you what exactly do we know? If the answer is nothing, that
9 tells me a lot as well.

10 MR. MARCKWALD: No, it may tell you something
11 about what I know, not what we know. And I think getting the
12 science people to sit down with you and tell you exactly what
13 they know, and how long they -- what they now know, what they
14 didn't know a year ago or two years ago, we should definitely do
15 that.

16 But I can't answer that question.

17 SENATOR JOHNSON: How can you adequately evaluate
18 the answer of whether they need more resources, and I certainly
19 agree with the Chairman, that money's not always the answer, but
20 how can you judge that without asking fundamental questions
21 about what do we know?

22 Howard Baker said, "What did the President know,
23 and when did he know it?"

24 What does this advisory committee know, and when
25 did they know it?

26 MR. MARCKWALD: Well, all I can say, Senator, is
27 that I have been guided by the people who are the absolute
28 leaders, plant pathologists, in the world that are working on

1 this at UC Berkeley.

2 And I just am not in a position to second-guess
3 whether they're doing things --

4 SENATOR JOHNSON: I'm not asking you to
5 second-guess. All I'm asking you is to ask them.

6 I would think --

7 MR. MARCKWALD: Fair enough.

8 SENATOR JOHNSON: I'm sorry it's coming up
9 picking on you.

10 MR. MARCKWALD: That's fine.

11 SENATOR JOHNSON: I've sat here quietly with the
12 two previous nominees, and it just is --

13 MR. MARCKWALD: It's a fair question, and I'll
14 get you an answer to it.

15 SENATOR JOHNSON: Okay.

16 Next question, and last question, Mr. Chairman,
17 is, are you committed to making sure that these Disabled Veteran
18 Businesses are placed on your next agenda, and they have an
19 opportunity to discuss these issues about the contracts and the
20 way they've been handled?

21 MR. MARCKWALD: Absolutely. I think that the
22 Policy and Management Committee of the Board that I sit on is
23 the right place to have that discussion so we can dig into it,
24 we can get the Department there, and we can try to get to the
25 bottom of it. So, I will definitely make that commitment.

26 It will be the July agenda, not the June one,
27 because it's too late to put an agenda item out for June. But
28 we will for sure -- you know, and I will talk to the gentleman

1 before I leave today and figure out what the best way to deal
2 with it, but I'll definitely do that.

3 SENATOR JOHNSON: Thank you, Mr. Chairman.

4 CHAIRMAN BURTON: All of the money that they've
5 gotten so far has gone into what? What I heard was that there's
6 not a lot of it going into the research to figure out what
7 happened. It's more to just kind of stop the flow?

8 MR. MARCKWALD: Perhaps I misspoke. There are
9 two -- there have been predominantly two pots of money, the
10 federal monies and the state monies. A portion -- and I think
11 that that's probably a 60-40 split, federal to state.

12 CHAIRMAN BURTON: No, the issue is, is money
13 going into research?

14 MR. MARCKWALD: And the federal money, as I
15 understand it, has primarily gone on the research side. The
16 state money has gone to the counties.

17 CHAIRMAN BURTON: Just one last. I assume that
18 this affects oaks outside of California? Or has it been
19 isolated? Do we know?

20 MR. MARCKWALD: There have been some
21 identifications in the Pacific Northwest. And I believe in one
22 species in the Midwest, not that is not an oak species in the
23 Midwest.

24 CHAIRMAN BURTON: Senator Knight.

25 SENATOR KNIGHT: Thank you, Mr. Chairman.

26 Didn't we have a Dutch Elm disease at one time?
27 Do we still have it? What did we do with that?

28 MR. MARCKWALD: Certainly we did have Dutch Elm

1 disease, and many cities, especially like Sacramento, lost the
2 majority of their elms.

3 There is now an inoculation program that many
4 cities have done that seem to have slowed down the virulence of
5 the Dutch Elm disease.

6 And I just, because I've lived here for a long
7 time, I know that a lot of the elms that were inoculated years
8 and years ago are still existing. So, I think they ultimately
9 learned how to inoculate the species.

10 SENATOR KNIGHT: How long did it take us to come
11 up with that inoculation?

12 MR. MARCKWALD: I would be guessing, but I think
13 it's the better part of 10 or 15 years.

14 SENATOR KNIGHT: Is that comparable to what we're
15 seeing in the oak stands?

16 MR. MARCKWALD: I don't think the four corners of
17 this particular disease have been precisely enough mapped to
18 know whether or not it's going to take that long.

19 SENATOR KNIGHT: Are you familiar with Michigan,
20 since you went to Michigan State, and their policies on the
21 management of their resources?

22 MR. MARCKWALD: I am in -- more on their
23 agricultural policies, not their timber policies.

24 SENATOR KNIGHT: So, you don't know how it would
25 compare to what California's doing?

26 MR. MARCKWALD: No.

27 SENATOR KNIGHT: Are you familiar with the
28 heartwig pines?

1 MR. MARCKWALD: I am.

2 SENATOR KNIGHT: Okay.

3 CHAIRMAN BURTON: Senator Karnette.

4 SENATOR KARNETTE: No questions.

5 CHAIRMAN BURTON: Witnesses in support?

6 Do you have family here?

7 MR. MARCKWALD: No, do I not.

8 MR. MASON: Good afternoon again, Mr. Chairman,
9 Members of the Committee.

10 Paul Mason for Sierra Club California, also in
11 support of Kirk Marckwald, who's been an excellent public
12 member, have thoughtful, very bright. Notwithstanding the fact
13 that he's not a plant pathologist, he's done a good job on the
14 Board.

15 One last observation I would make in regards to
16 the Board in general, not strictly speaking to any one of the
17 people here today, which is largely responsive to Senator
18 Karnette's observations about watershed rules, which is one of
19 my personal, and the Sierra Club's personal passions, regarding
20 trying to set some sort of thresholds for at what point when
21 you're logging a watershed or clear-cutting a watershed do you
22 get to the point where you're doing serious damage?

23 The Board has this tendency to look at issues ad
24 infinitum. You know, things go to the policy committee, and
25 then it's like watching grass grow or watching a glacier melt.

26 So, perhaps one of the things that the Board
27 could do in general, not just on the watershed rules, or on
28 clear-cutting, or oaks, or anything, is learn to act a little

1 more decisively, have a shorter timetable for how long things
2 get sent to a policy committee for review before they come back
3 to the Board and actually move things in a more expedient
4 process so that we don't have the same discussion for two,
5 three, four years at a time.

6 Thank you.

7 CHAIRMAN BURTON: That's a good way not to do
8 anything. Basically in forestry, if you don't do anything,
9 you're doing something for somebody.

10 MR. MASON: Correct.

11 CHAIRMAN BURTON: Thank you.

12 Witnesses in opposition?

13 Move the nomination.

14 SECRETARY WEBB: Senator Karnette.

15 SENATOR KARNETTE: Aye.

16 SECRETARY WEBB: Karnette Aye. Senator Knight.

17 SENATOR KNIGHT: Aye.

18 SECRETARY WEBB: Knight Aye. Senator Johnson.

19 SENATOR JOHNSON: Aye.

20 SECRETARY WEBB: Johnson Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Four to zero.

23 CHAIRMAN BURTON: Congratulations.

24 MR. MARCKWALD: Thank you.

25 CHAIRMAN BURTON: David Nawi.

26 MR. NAWI: Good afternoon, Mr. Chairman, Members
27 of the Committee.

28 It's a great pleasure to be here before you

1 today, and it's also a pleasure and a challenge to serve on the
2 Board of Forestry and Fire Protection.

3 I was initially appointed in September, and when
4 the term expired in January, I was reappointed to a full
5 four-year term.

6 Having looked at the Board of Forestry fairly
7 intensively over the period I've been on the Board, certain
8 things have become obvious to me. Among them were that the
9 constituency interested in the Board of Forestry from both sides
10 are very polarized. That is, you have an environmental
11 community that feels that forests are not being adequately
12 protected and a lot more needs to be done. You have a timber
13 industry that feels its viability is being threatened. They
14 feel that the level of regulation now is such that any more
15 regulation becomes more and more problematic.

16 I view my role and the Board's role as trying to
17 move ahead and address the very serious issues, and serious and
18 long-standing issues your committee has addressed here today,
19 including water quality, clear-cutting, Sudden Oak Death, and to
20 try and do that in a way that bridges the gap and tries to form
21 at least some sort of consensus.

22 But with consensus or not, I think it's very
23 important to move forward, and I hope to do so as a member of
24 the Board during the next several years.

25 I'd be glad to answer any questions you have.

26 CHAIRMAN BURTON: What's your view of the Board's
27 role in protecting the coho?

28 MR. NAWI: I believe that the Board -- it is

1 incumbent on the Board to make sure that timber harvesting
2 operations, individually and cumulatively, not only do not
3 impair water quality such that would have an effect on the coho,
4 but to work with the regional boards to try and enhance the
5 threatened and impaired streams that have been listed. I hope
6 that can be done.

7 I intend to put some personal effort to talk to
8 NOAA Fisheries, formerly NMFS, on efforts to move ahead on a
9 4(d) rule. This has been under discussion, I understand, for
10 years and years. I am personally acquainted with some of the
11 NOAA Fisheries people and have suggested an informal meeting.

12 I very much would like to move ahead to try and,
13 as I say, address the cumulative and individual impacts of
14 timber harvesting to make sure that any impacts are fully
15 mitigated and that there's a restoration plan in place, and one
16 that's acceptable to the regional boards as well, the regional
17 water quality boards as well.

18 CHAIRMAN BURTON: I don't know if this is a fair
19 question to ask you, but how long has the Forestry Board been in
20 existence?

21 I tell why I ask that. It just seems to be a
22 bizarre thing that the board that deals with cutting down trees
23 is the one that basically has the responsibility for keeping the
24 streams, and I see the relationship, but the streams kind of
25 nonpolluted and the fish alive. It seems like it's kind of
26 weird.

27 The best way to probably keep the streams clean
28 and fish alive may be, in theory, not be cutting down any or

1 many. But the Board of Forestry, part of what you do is try to
2 set up rules so people can cut down trees.

3 MR. NAWI: I understand the perhaps inconsistency
4 you're talking about, but one of the questions that we were
5 presented with in writing had to do with the relationship
6 between timber harvesting plans approved by the California
7 Department of Forestry and the water quality control boards.

8 I think that relationship is critical, and we
9 hope to improve it. We are having a joint meeting with the
10 State Water Quality Control Board this coming week in June, and
11 hope that we can move forward in a way that, regardless of which
12 agency has the ultimate responsibility, fully protective
13 standards can be agreed upon and met in practice.

14 CHAIRMAN BURTON: I would think, again back to
15 what the last person said, I really think one of the things that
16 -- how many members on the Board?

17 MR. NAWI: The Board by statute has nine. There
18 are seven members on the Board at this time.

19 CHAIRMAN BURTON: Does it take four out of seven
20 or five?

21 MR. NAWI: It takes five votes. That is a
22 majority of the full membership to pass a regulation

23 CHAIRMAN BURTON: So, you're already with two no
24 votes before you start.

25 MR. NAWI: I believe that the Board can move
26 forward and adopt --

27 CHAIRMAN BURTON: No, I mean you're starting off
28 with two no votes because they're not there.

1 MR. NAWI: Oh yeah, right.

2 CHAIRMAN BURTON: Because it would seem that one
3 of the things, and I don't know necessarily we'd want to do that
4 legislation, but that they ought to either do something or get
5 off the pot. And the way that the industry, in my judgment, has
6 been able to have its way is that the Board doesn't ever pass
7 any regulations because they study them to death. Then, as long
8 as nothing is prohibited or demanded of you, it's just human
9 nature, you go along your merry way.

10 I would think, one, it would be nice if the
11 Governor had a full complement on the Board, which I don't think
12 they've had.

13 When was the last time they had a full
14 complement? Who's been on the Board the longest?

15 MR. MARCKWALD [FROM THE AUDIENCE]: We did
16 have -- I think, just to correct, we have eight now not nine.

17 CHAIRMAN BURTON: We're moving up.

18 Have we ever had nine?

19 MR. MARCKWALD [FROM THE AUDIENCE]: We had nine,
20 and ninth one was the range person, Norman Waters.

21 CHAIRMAN BURTON: Ah, the last cowboy. Norman's
22 been off for well over a year.

23 MR. MARCKWALD [FROM THE AUDIENCE]: That's
24 correct, the range management slot.

25 CHAIRMAN BURTON: But I think that's one of the
26 frustrations we've had, is that the Board doesn't impose the
27 regulations, so the industry's operating on the whole.

28 Senator Johnson.

1 SENATOR JOHNSON: Just quickly, the issue that
2 was raised by the Disabled Veterans Businesses.

3 Are you committed as well to getting that to the
4 Board?

5 MR. NAWI: Yes, Senator Johnson. It would be my
6 intention, and Board member Marckwald as well, to arrange an
7 informal meeting as soon as convenient with the speaker, and
8 find out what the concern is, and bring it to the Board in an
9 appropriate agenda for consideration.

10 SENATOR JOHNSON: No further questions.

11 CHAIRMAN BURTON: Senator Knight.

12 SENATOR KNIGHT: Along with Senator Burton, I was
13 concerned about the fact that the whole Board apparently is
14 concerned about the fish and the water.

15 Do you have any obligation to support the timber
16 industry in improving their efficiency in maintaining the
17 forest?

18 MR. NAWI: Absolutely. I mean, the Board has a
19 dual role. That is, to protect the viable timber industry at
20 the same time as protecting the state's natural resources.

21 I think anything the Board does need to take
22 those two objectives fully into account.

23 One issue I think we can address that I'm very
24 sympathetic to on the industry's side is the difficulty in
25 complexity of some of the regulations and permitting
26 requirements. And it would be my intent look at ways to
27 streamline and simplify any requirements we could for their
28 compliance without sacrificing environmental quality or the

1 viability of the timber industry.

2 SENATOR KNIGHT: Is there any benefit from
3 clear-cutting in a checkerboard manner?

4 MR. NAWI: I believe that clear-cutting can
5 provide a silvacultural as well as an economic benefit.

6 The issue that I think needs to be very carefully
7 studied and addressed is the cumulative impacts of a
8 checkerboard clear cut.

9 I personally practice law and have been dealing
10 with CEQA for a long time. I think CEQA provides a very strong
11 tool for looking at cumulative impacts. There has been a lot of
12 criticism of the way CDF implements CEQA in terms of cumulative
13 impacts, particularly of clear-cutting, and the Board is aware
14 of that issue, and we intend to look at it along with the other
15 issues of concern to this Committee in the near future.

16 SENATOR KNIGHT: It appears as though we've been
17 clear-cutting for I don't think how long, at least as long as I
18 can remember. I used to fly over this country a hundred years
19 ago, and we were clear-cutting.

20 We're still doing it, and there ought to be
21 enough data available to evaluate the effectiveness, the
22 efficiency, or the benefits of that kind of logging.

23 MR. NAWI: There is continuing debate. I was at
24 a workshop where that issue came up and was told that the debate
25 had been going on for years. There's an immense amount of the
26 literature on each side discussing the issue without resolution
27 of whether other and prior actions are responsible for the
28 siltation in the streams, or whether clear-cutting is having a

1 bad effect on water quality and fish habitat.

2 It seems to me that the issue could be studied to
3 death. I think it's incumbent on the Board to take some actions
4 to address the cumulative impacts of clear-cutting.

5 SENATOR KNIGHT: So, you're telling me it's a
6 political issue.

7 MR. NAWI: Well, I think that you're not going to
8 get the answer from the scientists.

9 CHAIRMAN BURTON: Senator Karnette.

10 SENATOR KARNETTE: To go along, I think your
11 comment, you're not going to get the answer from the scientists,
12 is a good one.

13 But if you got a majority, which is five, right,
14 and you asked that a report on watershed, for example, which is
15 what I really think a lot about -- and by the way, if you do a
16 watershed study, would it apply to the whole state or just the
17 north coast, because I don't want it to take forever?

18 MR. NAWI: It would have to be done on an
19 individual watershed basis.

20 SENATOR KARNETTE: So, it wouldn't be the whole
21 state in one study?

22 MR. NAWI: No, you'd have to do them one at a
23 time and prioritize them.

24 SENATOR KARNETTE: And the watershed areas are
25 defined clearly?

26 MR. NAWI: Yes.

27 SENATOR KARNETTE: So they wouldn't have a
28 problem there.

1 So if you got a majority of five, and you asked
2 them to have a report back to you that said something, and you
3 could determine what kinds of questions you want them to answer,
4 do you have the authority to make that happen?

5 MR. NAWI: Yes, I believe we do, working with the
6 CDF.

7 One issue I would, if I could, is, part of the
8 difficulty of the Board is the relationship with CDF. I mean,
9 Senator Burton has asked my colleagues about the letter that was
10 sent. And I, like my colleagues, had no knowledge of this
11 letter.

12 CDF operates independently on a day-to-day basis,
13 so our Board is a part-time Board; we meet once a month. So, we
14 would have to work again through CDF to make sure any studies we
15 asked for were properly implemented and carried out.

16 But yes, I think they would follow our policy
17 direction and do that.

18 SENATOR KARNETTE: Especially if the Legislators
19 knew about it and reminded them that they should do it.

20 MR. NAWI: Certainly.

21 SENATOR KARNETTE: Thank you.

22 CHAIRMAN BURTON: Did you bring your family?

23 MR. NAWI: No, I don't, sir.

24 CHAIRMAN BURTON: Witnesses in support? Sierra
25 Club's duly noted.

26 MR. MASON: Yes, once again, Paul Mason for the
27 Sierra Club.

28 We also support the nomination of David Nawi. I

1 think that his expertise in both policy and some of these legal
2 matters will be very welcome on the Board.

3 CHAIRMAN BURTON: Thank you.

4 Witnesses in opposition?

5 Move the nomination.

6 SECRETARY WEBB: Senator Karnette.

7 SENATOR KARNETTE: Aye.

8 SECRETARY WEBB: Karnette Aye. Senator Knight.

9 SENATOR KNIGHT: Aye.

10 SECRETARY WEBB: Knight Aye. Senator Johnson.

11 SENATOR JOHNSON: Aye.

12 SECRETARY WEBB: Johnson Aye. Senator Burton.

13 CHAIRMAN BURTON: Aye.

14 SECRETARY WEBB: Burton Aye. Four to zero.

15 CHAIRMAN BURTON: Congratulations.

16 MR. NAWI: Thank you very much.

17 CHAIRMAN BURTON: Maeley Tom, State Personnel
18 Board.

19 MS. TOM: Good afternoon, Mr. Chairman and
20 honorable Members of the Committee.

21 Thank you for giving me the opportunity to meet
22 with you to discuss my nomination to the State Personnel Board.
23 As you're aware, I feel a little awkward being on this side of
24 the aisle, because I'm so used to being there with you.

25 Actually, my experience to serve on the State
26 Personnel Board really started before I worked as a legislative
27 staffer. My professional career started in personnel, as
28 Personnel Management Specialist with the California State

1 University of Sacramento, and I also served as a personnel
2 manager, post international, of the Honolulu International
3 Airport.

4 During my 20 years of experience with the State
5 Legislature, I primarily handled administrative responsibilities
6 as the Deputy Administrative Officer and Chief Administrative
7 Officer of the Assembly Rules Committee, and subsequently as
8 Chief of Staff to the former Senate President Pro Tem, David
9 Roberti.

10 I feel that this experience and my years in
11 personnel gives me a strong foundation to contribute to the
12 State Personnel Board, which will be facing a number of
13 challenges in the next year, or actually this year, in light of
14 the fact that we are facing some massive budget reductions, and
15 in light of the fact that we are looking at a potential layoff.

16 We also are looking at trying to implement a more
17 efficient selection system as well as a diversity program to
18 ensure that our workforce reflects the diversity of our growing
19 diverse population.

20 So with that, I will open myself up to questions
21 from the Committee.

22 SENATOR JOHNSON: Senator Knight.

23 SENATOR KNIGHT: No questions.

24 SENATOR JOHNSON: Senator Karnette.

25 SENATOR KARNETTE: I'll ask you the same question
26 I asked in the office about the computer knowledge, and if you
27 can find people who really are good with the technical areas
28 there because that's one of the questions we were concerned

1 about?

2 MS. TOM: I understand that. In light of the
3 fact that there's already an existing shortage of employees who
4 have computer skills, the State Personnel Board is responsible
5 for the placement of misplaced employees. And since we are
6 looking at an area where we already have a shortage of potential
7 employees with those skills, I would assume that the State
8 Personnel Board would take that into consideration in developing
9 some type of priorities so that we definitely take care of those
10 employees with those skills.

11 SENATOR KARNETTE: I'm particularly interested,
12 as I mentioned, I want to see some women doing some software and
13 such, because as I mentioned, the guys learn how to play all
14 these dangerous game on t.v. and become the professors of
15 computers, and I want to see some women in there.

16 MS. TOM: Absolutely. In fact, the role of the
17 State Personnel Board as the guardian of equal opportunities
18 actually implements some outreach programs to ensure that the
19 pool of applicants reflects the qualified members of both
20 genders.

21 SENATOR KARNETTE: I think the women could
22 rewrite the manuals so that they're understandable. That would
23 help.

24 MS. TOM: Thank you, Senator.

25 SENATOR KNIGHT: That's something you could do.

26 SENATOR KARNETTE: That's right, and I plan on
27 doing it. Technical writing is a real skill.

28 CHAIRMAN BURTON: Senator Johnson.

1 Do you want to introduce the family?

2 MS. TOM: Yes. I have with me my husband, Ron
3 Tom; my daughter Stephanie; and my son-in-law Tom Martinez,
4 who's with Senator Don Perata.

5 I didn't bring my grandson though.

6 CHAIRMAN BURTON: Witnesses in support?

7 MR. KENNY: Perry Kenny, California State
8 Employees Association, President.

9 We've had a good experience with Maeley Tom over
10 the years, and we stand in strong support. You have a letter
11 from us, and we urge your support.

12 Thank you.

13 MR. PEREZ: Yes, Mr. Chairman, Ed Perez, Chair of
14 the Asian Pacific Islander Committee for SEIU Local 1000, and we
15 represent state employees.

16 We strongly endorse and support Maeley's
17 appointment.

18 I did want to make some personal comments about
19 Maeley. I was at an event recently, and she actually had to
20 leave early because she's a very dedicated grandma, and she had
21 to take care of her grandson.

22 MS. CHIAO: Good afternoon. I'm Elaine Chiao,
23 and I'm representing the Asian Pacific State Employees
24 Association.

25 Maeley has been our friend for the 25 years of
26 our existence, and her appointment is significant in the fact
27 that she is the first Asian American appointed to the State
28 Personnel Board in its 50-plus year history, and we strongly

1 recommend her appointment.

2 CHAIRMAN BURTON: Witnesses in opposition?

3 SENATOR KARNETTE: May I move her nomination.

4 CHAIRMAN BURTON: Call the roll.

5 SECRETARY WEBB: Senator Karnette.

6 SENATOR KARNETTE: Aye.

7 SECRETARY WEBB: Karnette Aye. Senator Knight.

8 SENATOR KNIGHT: Aye.

9 SECRETARY WEBB: Knight Aye. Senator Johnson.

10 SENATOR JOHNSON: Aye.

11 SECRETARY WEBB: Johnson Aye. Senator Burton.

12 CHAIRMAN BURTON: Aye.

13 SECRETARY WEBB: Burton Aye. Four to zero.

14 CHAIRMAN BURTON: Congratulations, Maeley.

15 MS. TOM: Thank you.

16 [Thereupon this portion of the

17 Senate Rules Committee hearing

18 was terminated at approximately

19 2:47 P.M.]

20 --ooOoo--

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1 CERTIFICATE OF SHORTHAND REPORTER

2
3 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Rules Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 30th day of May, 2003.

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19 EVELYN J. MIZAK
20 Shorthand Reporter



BOARD OF FORESTRY QUESTIONS

Statement of Goals

1. What do you hope to accomplish during your term as a member of the Board of Forestry?
Please provide a brief statement of your short and long-term goals.

New Initiatives

Earlier this year, the Board of Forestry Chair placed before the Board as discussion items several forest policy issues including old growth, clear-cutting, and the conservation of oak woodlands

1. Has the Board taken any action on these issues? What is the timetable for addressing them?
2. What would be your preference as to how the Board handles these issues?
3. Are there other priority issues you believe the Board is not addressing but should be?

Timber Harvesting and Water Quality

Enforcement of water quality laws has been divided between the Department of Forestry and regional water quality boards. The effect of timber harvesting on water quality can be significant. Numerous studies point to timber harvesting as a major cause of stream impairment. Approximately 90% of the rivers and streams on the North Coast are listed as impaired under the Clean Water Act. A new Memorandum of Understanding maintains the old approach by which CDF, and not the regional water boards, will enforce the water quality laws, although it is possible that the regional boards will have more say in requiring monitoring if CDF agrees.

1. Do you believe the recently negotiated MOU will result in improved water quality and fewer problems between the regional boards and CDF? If so, how?
2. Should other actions be taken to improve communication between CDF and the State and regional water quality boards and the Department of Fish and Game?

Clear-Cutting

Sierra Pacific Industries, the largest private landowner in the state, has greatly accelerated clear-cutting of its forests. In 1999, it sought approval to clear-cut 88 percent of the 9,733 acres covered under its timber harvest plans. Some of these plans were withdrawn, but clear-cutting is still SPI's dominant method of harvesting. In July 2002, the Central Valley Regional Water Quality Control Board stated that Sierra Pacific owns most of the private timber land in the Central Valley region, is accelerating its rate of harvesting, and shows increases in high-impact logging methods.

1. Are you aware of the water quality impacts that are expected as a result of Sierra Pacific Industries' type and scale of clear-cutting? Will this intensive clear-cutting change the Sierras?
2. Do you favor such large-scale clear-cutting?

Cumulative Impacts

Over the last several years, governmental and scientific reports have pointed out that the timber harvest rules do not adequately address the cumulative impacts of harvesting timber. These studies indicate that: (1) the decision whether to allow timber harvesting in a given watershed is made with inadequate scientific assessments and that (2) timber harvesting is not analyzed in terms of the potential continuing effects of prior timber harvesting.

1. Does the Board need new authority to deal with this issue? How should the issue of cumulative impacts be addressed by the Board?
2. Senator Sher has a bill, SB 217, that deals with the rate of harvesting in watersheds. Do you believe rate of harvest should be addressed by the Board? If so, how?

Sudden Oak Death

Sudden oak death has become a major infestation in California. The infestation has killed thousands of trees in the nine county Bay areas, and this year DNA of the fungus has been found in one county in the Sierra foothills (Placer County). The plague is no longer confined to oaks. Researchers have confirmed 15 host plants or trees in California.

1. How has the Board of Forestry responded to the spread of Sudden Oak Death?
2. Has your board requested money in the budget to identify and fight Sudden Oak Death?
3. Has your board made any policy or fiscal recommendations to the Department of Forestry regarding Sudden Oak Death?

Oak Woodlands

The Integrated Hardwood Management Program at UC Berkeley estimates that more than 1.5 million acres of oaks have been converted in California since 1945. The rate will likely increase because of increased development and population pressure. The Board has never taken a position on this issue.

1. Does the Board need legislative action to create new authority before it can require mitigation for the loss of oak woodlands?
2. Do you support a new effort to conserve these important trees?

Board of Forestry's Policy Committees

The Board has four policy committees that meet to discuss and make recommendations back to the full Board on needed actions. The committees are 1) Policy and Management, 2) Forest Practices, 3) Resource Protection, and 4) an ad hoc Roads and Watershed Management Committee. Recently Board staff said that none of the committees had published anything in the last several years.

1. What do these committees do? How often do they meet? Are any of the reports or recommendations published? Are they made public?
2. Is there any timeline for issues that are referred to a committee?
3. How are members chosen?

Senate Rules Committee
The Honorable John Burton, Chairman
State Capitol, Room 420
Sacramento, California 95814-4900

May 12, 2003

Subject: Senate Confirmation Hearing, Board of Forestry (Bosetti)

Dear Senator Burton:

In response to the questions posed of me for my 5/28/03 confirmation hearing, I have attempted to answer your requests below. For your convenience, I have attempted to respond to your questions in the same order in which they were presented. My responses are as follows:

Statement of Goals

My primary goal as a member of the Board of Forestry is to insure that the policies and regulations adopted by the Board do the following things:

- 1) provide a climate that encourages landowners to maintain or increase their investment in timberlands;
- 2) enhance or restore the productivity of timberlands;
- 3) substantially lessen or avoid significant adverse impacts to the environment; and
- 4) allow for site-specific solutions.

To the degree I can influence the outcome, my short-term goals are:

- 1) to complete a review of the 1996 Fire Plan;
- 2) achieve resolution on the Threatened and Impaired Rules;
- 3) work to improve communication between the BOF and the boards and commissions of the Review Team Agencies;
- 4) to work to frame the issues and chart a course of action for the forest policy initiatives placed before the Board by Chairman Dixon.

My long-term goal is to make the permitting process for timber harvest plans less costly and less time consuming for all parties involved. In addition, I would work to support efforts that encourage landowners to retain wild lands in "open space" characteristics.

New Initiatives

Yes. These issues were brought to the Board by Chairman Dixon in February of this year at which time the full Board discussed how best to proceed. The outcome of this discussion resulted in the Chairman concluding, with the Board's concurrence, that the best manner to tackle these issues was to deal with them at the committee level and that the Board's Committee structure should be expanded to include a Policy and Management Committee to complement the three existing committees. Each of the new initiatives mentioned has been sent to the Policy and Management Committee. The committee (comprised of members O'Dell, Nawi and Markwald) are working to distill the elements of each issue through discussions with the interested public and will provide a recommendation on how to deal with each issue for the Board's consideration by the end of 2003.

I believe this is the appropriate way to deal with these issues.

With regard to other priority issues that the Board is not addressing but should be, I believe the Board should conduct a review of the level of staff support needed to meet the workload demands facing the Board.

MAY 15 2003

Timber Harvesting and Water Quality

The Board's rules regarding protection of the beneficial uses of water require the Director to disapprove any timber harvest plan that would cause a violation of any requirement of an applicable water quality control plan adopted or approved by the State Water Resources Control Board. The new Memorandum of Understanding (MOU) does the following things that I feel will help CDF and the Water Boards carry out their mission with regard to insuring that water quality goals are attained:

- 1) It clearly articulates each of the agencies statutory obligations;
- 2) It establishes a six month timeline for CDF and the Water Boards to work on methods to address the two most contentious issues— Cumulative Affects Analysis and Monitoring;
- 3) It establishes a mechanism for resolving conflicts prior to plan approval.

This new MOU also places new emphasis on monitoring—specifically in the tasks assigned to the Board's Monitoring Study Group (MSG) I believe that this emphasis on monitoring and subsequent adaptation of the results into the Board's rulemaking process is a definite improvement over the previous MOU. With regard to actions that could be taken to improve communication between CDF and the State and Regional Water Quality Boards and the Department of Fish and Game, I believe that continuing efforts to conduct joint field meetings between the Board of Forestry and the State/Regional Water Boards is a positive step in that direction. For example, next month's Board of Forestry meeting in Sonora will include a joint meeting and field tour between both State boards.

Clear-Cutting

First of all, I need to point out that I work for Governor Davis when sitting on the Board of Forestry, not Sierra Pacific Industries. Second, I should point out that when I am not performing my duties for the Board of Forestry I am employed by Sierra Pacific in the capacity of a Sawmill Division Timber Manager in the small community of Burney. As such, my responsibilities are to procure the necessary log supply for a number of Sierra Pacific sawmills—I have no direct responsibility for management of SPI's fee land-- land that is subject to the California Forest Practices regulations. However, I am fully aware of most of the philosophies and policies that Sierra Pacific employs in management of their private forestland in California. With that in mind, I will attempt to answer the questions in your 4/29/03 letter.

I am aware of the public concerns regarding potential impacts to water quality. Sierra Pacific, like all large industrial timberland owners in this state, has an obligation to prepare a long-term plan that demonstrates how it will balance growth and yield over time (while taking into account the constraints imposed by consideration of other forest values which include the beneficial uses of water and aesthetic enjoyment among other things). Considering that Sierra Pacific's plan for its timberland spans a period of 100 years and includes a variety of different silvicultural systems, I do not believe the activities planned will have a detrimental effect on the Sierra Nevada Range. For example, SPI's long-term plan was analyzed and approved by CDF, DFG, and the Regional Water Boards. It clearly shows that:

- 1) the intended timber harvest over the next 100 years is not expected to have any adverse environmental effects;
- 2) it increases the average size of individual trees on this property from the current average diameter of 18 inches to 32 inches;
- 3) it increases the amount, or inventory, of standing timber by a factor of almost 3;
- 4) it helps restore the mix of conifer species back to that which occurred prior to the settlement of California by Europeans. In short, it increases the percentage of pine species and decreases the level of fir and cedar, thus producing a more fire-resistant forest for SPI and adjacent landowners; and
- 5) it increases the amount of nesting habitat for spotted owls by 150%.

I truly believe that clearcutting, when applied in the context of the limitations imposed on its use by the Forest Practice Act, is a necessary and acceptable practice. Its use may not be aesthetically pleasing to the casual visitor of private forestland in the short term, but it is a valuable silvicultural method that mimics natural disturbances—essential to regenerate many native conifer species in California. I also think it is

appropriate to point out that a recent report to the Board of Forestry from CDF indicates that the use of clearcutting is scheduled to decline over the next several decades, not increase. CDF utilized the long-term sustained yield documents of numerous industrial landowners (including Sierra Pacific Industries) to prepare this analysis and I believe a copy can be sent to your staff if you so wish.

I think it is sound public policy to emphasize tree growing on a small percentage of California's forests. Eighty percent of the wood Californians use comes from outside of California. Exporting that demand offshore where environmental regulations aren't as strict is not responsible public policy in my view.

Cumulative Impacts

I do not believe the Board needs new authority to deal with Cumulative Impacts. While there are very divergent opinions on the science relative to this issue, the Board has been supportive of a pilot project to evaluate the methods used in the Dunne Report. In the meantime, I believe that the current procedures and regulations are sufficient to analyze cumulative effects of timber harvesting.

In particular, I believe the Board's current rules adequately allow for consideration of the rate of harvest. Under existing rules, this is given consideration on each plan submitted and with each landowner's declaration of how they intend to meet the goal of maximum sustained production. In my opinion, this site-specific analysis of harvest levels is far superior to a "one size fits all" numeric quota, as proposed in Senator Sher's bill.

Sudden Oak Death (SOD)

The Board recognizes the seriousness of the threat posed by *Phytophthora ramorum*. It also recognizes that the science regarding this disease is fast emerging but still very uncertain with regard to its origin, how it is spread and how far it can spread. With this in mind, the Board directed the Department of Forestry and Fire Protection, on February 6, 2001, to work with the Oak Mortality Task Force and other State Agencies to develop the most appropriate management practices to reduce the spread and provide appropriate hazard abatement in those areas that are impacted by SOD. Further, it directed the Department to keep the Board advised of the status of the science in the identification, vectors, spread, and control of the pathogen responsible for SOD as well as any information necessary for assessing future Board action, including support needed to carry out the Task Force's workplan. On April 4, 2001 the Board passed a resolution approving a Zone of Infestation that was declared by the Director of CDF. The Board has also been involved in the approval of County Plans filed under the provisions of AB 62.

To my knowledge the Board has not requested money in the budget to identify and fight Sudden Oak Death but has been supportive of the Oak Mortality Task Force's recommendations for funding research, public education, hazard abatement and restoration.

Oak Woodlands

The Board has been concerned with the impacts of population growth and various associated uses on the hardwood resources of the state for some time. In fact, in 1987 the Board (in conjunction with the Fish and Game Commission, the Department of Forestry and Fire Protection, the Department of Fish and Game, and the UC Cooperative Extension) started an Integrated Hardwood Range Program designed to provide research, education, and monitoring of the hardwood resource. In 1993, the Board reviewed the results of this program and also reviewed the need for statewide regulation of hardwoods and decided that such prescriptive regulatory controls were not warranted at that time. Instead, the Board and the Fish and Game Commission have adopted a *Joint Policy on Hardwoods* to provide guidance to their respective departments regarding the management of hardwoods.

The Board does not need legislative action to create new authority before it can require mitigation for the loss of oak woodlands. However, the legislature would need to provide both a credible scientific rationale

for imposing regulations and a significant increase in budgeted dollars to administer any regulatory program created by such action.

I support any effort that encourages landowners to maintain their land in open space.

Board of Forestry's Policy Committees

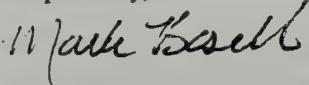
These committees serve to provide a forum for focussed review and analysis of the issues directed to it by the full Board. They meet monthly-- the day prior to the Board's monthly meeting or more frequently at the committee chairman's discretion. Any reports or recommendations are reported out of committee at each regularly scheduled Board Meeting.

Committee chairmen are responsible for establishing timelines and schedules which, in turn, are monitored by the Board's Chairman.

The Board's Chairman assigns members to committees.

I hope that these responses aid in your preparation for the 5/28 Senate Confirmation hearing. Please contact me at 530/335-3681 if you need further information regarding this matter.

Respectfully,



Mark Bosetti
Member, Board of Forestry

Board of Forestry Questions
Susan Britting
May 13, 2003

Statement of Goals

My overarching goal during my term as a board member is to promote the protection of species and ecosystems in California's forest and rangeland environment. In the short term, my goals include:

- 1) increasing my knowledge of the regulatory process and the Board's jurisdiction;
- 2) promoting increased protection for sensitive aquatic habitats through rule making;
- 3) seeking improved protection for deciduous oaks within THPs.

My long term goals include:

- 1) addressing the long term management of forest lands to ensure that mature and old growth stages are reasonably abundant and well distributed throughout California;
- 2) promoting actions that give the Board the authority to oversee and regulate the conversion of oak woodlands to other commercial uses;
- 3) seeking a better balance between intensive harvest practices (e.g. clear-cutting) and resource protection;
- 4) seeing that cumulative effects analyses appropriately disclose the effects of historic actions and properly place the actions proposed today in context of the ongoing effects from past actions.

New Initiatives

Old growth, clear-cutting, conservation of oak woodlands

1. Has the board taken action on these issues? What is the timetable for addressing them?

Informational presentations were given by CDF on these topics at the February board meeting.

Old growth, the rate of clear-cutting harvest, and woodland conservation outside of the THP planning process were assigned to the Policy and Management Committee. This committee recommended to the Board, and the Board agreed, that we consider and discuss each of the topics separately in upcoming Board meetings. The objectives of the presentations are to: 1) provide the Board the variety of perspectives on each issue; 2) provide information for the Board to use in setting policy direction. My expectation is that at the conclusion of each presentation, the Board will discuss and decide how to proceed in addressing each issue. The issues will be presented at the following board meetings: oak woodlands in June; old growth in July; clear-cutting in August.

Variable retention (a modified type of clear-cutting) and conservation oak woodlands affected by timber practices were assigned to the Forest Practice Committee. This committee has been discussing a rule package to address conserving deciduous oaks within THPs and is expected to forward a recommendation to the Board at the June meeting. This committee is also discussing rule changes that would improve the feasibility of using variable retention while providing increased benefits to wildlife and plant communities. Action on this, in the form of a rule package, would be recommended by the committee to the Board at the July meeting.

Board of Forestry Questions**Susan Britting****May 13, 2003****2. What would be your preference in how the Board handles these issues?**

I find the present approach to addressing these issues acceptable. It sets up a timeline for the consideration of each issue and sets a date by which the Board will make decisions on whether to: 1) proceed with a rule package; 2) refer the item back to committee for specific action; 3) discontinue action on the topic; or 4) propose some other approach.

3. Are there other priority issues that the Board is not addressing but should be?**No.****Timber Harvesting and Water Quality****1. Do you believe the currently negotiated MOU will result in improved water quality and fewer problems between the regional boards and CDF? If so, how?**

Through the MOU, CDF is making a commitment to develop effective working relationships with the cooperating water quality agencies. As a result of the MOU, inter-agency meetings to discuss and agree upon an approach to address monitoring have been initiated. The group is working on a draft MOU for monitoring and discussing how the Monitoring Study Group (a committee of the Board) could be expanded to include the monitoring contemplated under the MOU.

Thus, the MOU can be used by the Board to monitor and measure CDF's success in working cooperatively with the water quality agencies to resolve disputes over resource management. These MOUs, if pursued rigorously, have the potential to improve relationships among agencies. With additional agreements about monitoring requirements and agreements on the mechanisms to incorporate monitoring results into planning, improvements to water quality are also possible.

2. Should other actions be taken to improve communication between CDF and the State and regional water quality boards and the Department of Fish and Game?

The Board is undertaking board level discussions with the other agencies to discuss common issues and coordinate policy making. At the June meeting, the Board will meet with the State Water Board to discuss issues around protecting water quality and beneficial uses of water in the face of timber harvest. Recently, The AD Hoc Roads Management Committee invited participation from partner agencies in the development of a Roads Management Plan policy. The intent of this overture was to alert the agencies to a policy framework being considered by the committee and invite participation with the expectation that some of the regulatory requirements required by the various agencies might be met through a Roads Management Plan. The ultimate goal is to improve resource protection and streamline regulatory process where feasible. Such ongoing and continued engagement with partner agencies can, overtime, result in improved relationships among agencies.

Board of Forestry Questions

Susan Britting

May 13, 2003

Clear-Cutting

1. Are you aware of the water quality impacts that are expected as a result of Sierra Pacific Industries' type and scale of clear-cutting? Will this intensive clear-cutting change the Sierras?

The potential for water quality impacts resulting from clear-cutting depend on many site-specific factors including slope, soil type, forest type and local climate. Intensive clear-cutting has the potential to degrade water quality in the Sierra Nevada as well as changing the character of the forested landscape. This type of even-aged management focuses on replanting primarily one conifer species. In the replanted areas, the understory plants are kept to a minimum through the use of herbicides. These management actions tend to create a uniform forest stands that lack plant and habitat diversity. The plan to "rotate" or cut the forest down every 80-100 years results in a forest that never has the chance to develop large, old trees or the forest structure that is associated with old growth forests. Repeating this type of harvest in a series of blocks over the landscape can change the texture and nature of the forested area for many years to come.

2. Do you favor such large-scale clear-cutting?

No.

Cumulative Impacts

1. Does the Board need new authority to deal with this issue? How should the issue of cumulative impacts be addressed by the Board?

New authority is not needed for the Board to address cumulative impacts. However, the Board needs to take simultaneously two different approaches to address cumulative effects. In the short term and in the absence of additional scientific information, the Board should identify activity thresholds for at risk watersheds above which additional timber harvest is not allowed or is limited to practices that produce a significantly lower impact. Until additional information is developed, these thresholds should be conservative in nature and error on the side of resource protection. For the long term, the Board should pursue the development of a watershed analysis process, as described in the Dunne Report (2001), that produces a comprehensive assessment of historic and proposed practices in the watershed and evaluates the risk that these practices will increase cumulative effects.

2. Senator Sher has a bill, SB 217, that deals with the rate of harvesting in watersheds. Do you believe the rate of harvest should be addressed by the Board? If so, how?

Setting a rate of harvest is one mechanism to balance resource protection with timber production. Presently, the Board has addressed the concept of rate of harvest through the Sustainable Yield Plan (SYP) and the Option A process. In these instances, a balance is sought between the extraction of timber and the growth of timber. Similarly, a set rate of harvest could be used to reduce risks to water quality or reduce other impacts that can result from the broad scale changes in vegetation associated with clear-cutting. Identifying an appropriate rate of harvest to balance

Board of Forestry Questions

Susan Britting

May 13, 2003

resource protection needs is challenging because it depends in large part on site specific conditions. I believe it appropriate for the Board to consider how and in what circumstances setting a rate of harvest would contribute to resource protection. For example, establishing a rate of harvest might be an appropriate action to reduce cumulative effects in watersheds at risk. The Board identified rate of harvest as a priority issue to address this year and it has been referred to the Policy and Management Committee for discussion. I expect that this committee will report back to the Board later this year with a recommendation on how to proceed on the issue.

Sudden Oak Death

1. How has the Board of Forestry responded to the spread of Sudden Oak Death?

The Board adopted a resolution in early 2001 that directed the CDF "to work with the Oak Mortality Task Force and other State Agencies to develop the most appropriate management practices based on the current and emerging science to reduce the risk of spread and provide appropriate hazard abatement in those areas that are identified as impacted by Sudden Oak Death." As directed in this resolution, the Oak Mortality Task Force regularly reports to the Board on "the status of the science in the identification, vectors, spread, and control of the pathogen responsible for Sudden Oak Death as well as any information necessary for assessing future Board action, including the support needed to carry out the Task Force's work plan."

2. Has your board requested money in the budget to identify and fight Sudden Oak Death?

The Board submitted a letter in support of the budget requested by the Oak Mortality Task Force for 2002; their program was fully funded in that budget cycle. The Task Force has submitted a budget for 2003. The Board authorized at the May meeting submission of a letter supporting the Task Force's budget for 2003.

3. Has your board made any policy or fiscal recommendations to the Department of Forestry regarding Sudden Oak Death?

In addition to the resolution mentioned in item 1 above, the Board passed a resolution in mid 2001 which directs that all activities of the CDF, including timber activities approved by the them, comply with the regulations on Sudden Oak Death issued by the California Department of Food and Agriculture.

Oak Woodlands

1. Does the Board need legislative action to create new authority before it can require mitigation for the loss of oak woodlands?

In so far as the loss of oak woodland values are associated with commercial timber harvest on private land, the Board can contemplate measures to conserve or protect oaks. Such an action is now under review in the Forest Practices Committee. A rule package is being developed by this

Board of Forestry Questions**Susan Britting****May 13, 2003**

now under review in the Forest Practices Committee. A rule package is being developed by this committee that is directed at protecting and conserving deciduous oaks when associated with THPs. A recommendation to the board on this rule package is expected at the June meeting.

The loss of oak woodlands resulting from conversion to other uses, such as vineyards or residential development, can not be regulated effectively under the Board's current authority. New authority appears to be necessary for the Board to address oak woodland loss due to conversions.

2. Do you support a new effort to conserve these important trees?**Yes.****Board of Forestry's Policy Committees**

In reference to the following committees: Policy and Management; Forest Practices; Resource Protection; Ad Hoc Roads and Watershed Management

1. What do these committees do? How often do they meet? Are any of the reports or recommendations published? Are they made public?**Committee charter:**

Policy and Management – Evaluate issues; recommend actions to the full Board; monitor the THP process

Forest Practices – Develop rules and recommend rule packages to the Board; evaluate the effectiveness of rules

Resource Protection – Reviewing and revising Board Policy relative to fire and vegetation management; monitoring CDF's fire and vegetation management operations; recommending updates to the California Fire Plan

Ad Hoc Roads and Watershed Management – Develop specific rules related to a road package and road management plan; expectation is that committee will disband when these tasks have been brought to conclusion.

Each committee meets once per month with the exception of December.

Recommendations are made in public by these committees to the Board at the regularly scheduled Board meetings. The reports and recommendations of these committees are made public in the Board minutes.

2. Is there any timeline for issues that are referred to a committee?

There is no mandated timeline. The Board has generated a list of issues that we jointly believed to be important to consider in the coming year. Included among these are the issues raised by the legislature – clearcutting, old growth, and oak woodland conservation. The Board Chair assigned the issues to the various committees. The committees were directed by the Board Chair

Board of Forestry Questions

Susan Britting

May 13, 2003

to review the issues before them and set priorities for deliberation and action. At the May board meeting, each committee discussed their actions taken to date to address the issues before them with particular attention paid to the timeline for resolution of the issues. In many cases, action will be recommended by the committee to the board at the June or July meetings.

3. How are the members chosen?

The Board Chair invited feedback from each member on which committees were of interest to them. Following this, the Board Chair assigned membership to the various committees.

May 14, 2003
Kirk Marckwald
Responses to Rules Committee Questions on Forestry Matters
Page 1

Responses of Kirk Marckwald Member, Board of Forestry

Statement of Goals

1. *What do you hope to accomplish during your term as a member of the Board of Forestry? Please provide a brief statement of your short and long-term goals.*

I am committed to working with all interests to fashion rules that protect long-term environmental productivity of California's timber resources. I believe that keeping intact a working forestry landscape is an essential outcome. This goal must be strived for, however, with clear rules, vigorously enforced to protect fish, soil, plant and animal species and the beneficial uses of water.

My personal goals while on the Board:

- Invest time on issues that matter
- Makes sure the Board considers rules and policy changes in a timely and efficient manner
- Improve the civil/administrative penalties process
- Provide greater flexibility in rules, provided that the timber operators agree to liquidated damages or stipulated penalties if violations do occur
- Ensure that the Board stays in sync with our sister agencies, especially the Fish and Game Commission and the Regional Water Resources Control Boards, and that conflicts when they arise are speedily resolved

New Initiatives

1. *Has the Board taken any action on these issues? What is the timetable for addressing them?*
2. *What would be your preference as to how the Board handles these issues?*

These issues were assigned to the Board's Policy and Management Committee. For each issue, at each of our next monthly meetings, the full Board will hold one to two hour colloquies on each topic. At the conclusion of these sessions, the Board will determine if there are specific actions that it should take and/or make recommendations to others, such as the Legislature, if we believe there are actions that should be taken, but that the Board does not have authority to take them.

3. *Are there other priority issues you believe the Board is not addressing but should be?*

This year, the Board should consider adopting the provisions contained in the Stewardship NTMP. It should also consider the role that incentives and conservation

May 14, 2003
Kirk Marckwald
Responses to Rules Committee Questions on Forestry Matters
Page 2

easements might play in helping to protect the productivity and ecological health of forest resources.

Timber Harvesting and Water Quality

1. *Do you believe the recently negotiated MOU will result in improved water quality and fewer problems between the regional boards and CDF? If so, how?*

Clearly, the dispute resolution provisions of the MOU will help avoid problems. However, until there is an agreed-upon monitoring section included, I can not render an opinion as to there will be fewer problems between the agencies. The Board and the State Water Control Board are to discuss this matter when we meet together on June 4th.

2. *Should other actions be taken to improve communication between CDF and the State and regional water quality boards and the Department of Fish and Game?*

Our Board has been a strong and faithful participant in trying to fashion a cooperative, engaged relationship between the various agencies. We have been disappointed in the past when sparse attendance by members of our sister agencies made joint meetings more symbolic than productive.

Clear-cutting

1. *Are you aware of the water quality impacts that are expected as a result of Sierra Pacific Industries' type and scale of clear-cutting? Will this intensive clear-cutting change the Sierras?*

I am not aware of the quantification any specific water quality impacts from clear-cutting in the Sierra. As the Rules Committee is well aware, it is the job of the CDF THP approval process to assure there are no significant water quality impacts both on an individual THP basis and on a cumulative basis. If any party believes CDF is failing to achieve this objective, the Board should use its oversight role of CDF to conduct an investigation of current and best practices. I believe intensive clear-cutting over time will change the visual character of the Sierras.

2. *Do you favor such large-scale clear-cutting?*

Speaking as a Public Member of the Board, I do not favor a change in visual character that long-term clear-cutting may produce. However, I would need guidance from other Board members and other parties to help me determine if there are more sound and less visually impactful harvesting methods that should be mandated or encouraged.

May 14, 2003
Kirk Marckwald
Responses to Rules Committee Questions on Forestry Matters
Page 3

Cumulative Impacts

1. *Does the Board need new authority to deal with this issue? How should the issue of cumulative impacts be addressed by the Board?*

The Policy and Management Committee of the Board intends to recommend to the full Board that it hold a workshop/colloquy session on cumulative impacts issues during 2003. The outcome of that session will help me determine if I believe additional authority is necessary. Going into that process, however, I can say I am not satisfied that the Board's rules and guidance to CDF on this matter is sufficiently clear to yield consistent, acceptable results, especially in light of the lack of thresholds of significance standards to guide the plan preparers and reviewers.

2. *Senator Sher has a bill, SB 217, that deals with the rate of harvesting in water sheds. Do you believe rate of harvest should be addressed by the Board? If so, how?*

A "rate of harvest" approach is one method to address the cumulative impact issue. The passage of a bill such as SB 217 could serve as a placeholder "precautionary rule" until or unless the Board develops site or characteristic specific approaches. I do believe the Board and its interested parties would be better served if the long-term prescription was more site-specific.

Sudden Oak Death

1. *How has the Board of Forestry responded to the spread of Sudden Oak Death?*
2. *Has your Board requested money in the budget to identify and fight Sudden Oak Death?*
3. *Has your board made any policy or fiscal recommendations to the Department of Forestry regarding Sudden Oak Death?*

CDF has been the prime driver of the efforts, not the Board. However, even though the Board has not asked for money in the Board's budget, the Board has passed several resolutions and authorized letters to the Governor encouraging sufficient and ongoing funding for the work of the Oak Mortality Task Force and its members. On several occasions, I have asked that the Director of the Taskforce come to the Board, if they needed help raising additional funds for the Taskforce's work.

A colloquy to discuss this subject will be conducted during the Board's meeting in June.

Oak Woodlands

1. *Does the Board need legislative action to create new authority before it can require mitigation for the loss of oak woodlands?*
2. *Do you support a new effort to conserve these important trees?*

The Board has authority to require mitigation for loss of Oak Woodlands due to firewood cutting, as well as to ensure that the Board's conversion process is not used to piecemeal projects, especially vineyards, together. I support taking both of these initiatives, but the lions share of loss of oaks is due to developments in the urban/wildlands interface. If the Legislature were to decide that it wanted the Board to take on this issue, substantial new authority and perhaps budgets (unless the program were funded by user fees) would be required to understand and address this issue. As members of the Committee may know, the Board in late 1980s tried to encourage counties to address these problems directly; results have ranged from disinterest and failure to interesting and creative approaches.

This matter will also be addressed at a colloquy at the full Board meeting in June.

Board of Forestry's Policy Committees

1. *What do these committees do? How often do they meet? Are any of the reports or recommendations published? Are they made public?*
2. *Is there any timeline for issues that are referred to a committee?*
3. *How are members chosen?*

Committees meet, usually for 3-4 hours, at each of the Board's monthly meetings. At each full Board meeting, the Chair of each committee gives his report as to the topics covered and the disposition of various matters before each Committee. Especially for those matters that face an Office of Administrative Law deadlines for submission of new rules, the Chair of the Board continually reminds the Committee Chairs that such proposals need to be back before the full Board for timely consideration. The Chair of the Board selects the members and Chairs of the Committees.

**RESPONSES TO QUESTIONS FROM SENATE RULES COMMITTEE
BOARD OF FORESTRY AND FIRE PROTECTION
SUBMITTED BY DAVID NAWI - MAY 14, 2003**

Statement of Goals

During my term on the Board, I would like the Board to actively and effectively address issues of long-standing concern to the public, industry and the Legislature. I would also like the Board continuously to review its functioning, including not only the way it addresses substantive issues, but also its relation to the Department and its staffing, in order to maximize both its ability to be responsive and the credibility of its decisions and leadership.

My short-term goals relate to substantive issues facing the Board. I would like the Board to address the issue of clear-cutting, particularly in the context of cumulative impacts to water quality and biological and timber resources, and to consider appropriate mechanisms to assure that clear-cutting does not conflict with the goals of a sustainable industry and a sustainable environment.

I would like the Board to address water quality issues, not only in the context of the recent Memorandum of Understanding with the State Water Resources Control Board and regional boards, but also through vigorous efforts to foster the development of a 4(d) rule that will provide adequate protection of water quality and listed fish species, address the concerns of both fishery and water quality agencies, and provide greater certainty and efficiency in the THP review process.

I would like the Board to analyze and develop potential approaches to enhance the protection of remaining old growth on private lands, and to continue its strong interest in and support for efforts to understand and contain sudden oak death. I would also like the Board to assess the utility and practicability, in light of resource constraints, of addressing oak woodlands, possibly in partnership with local jurisdictions (counties) that have taken steps to address the loss of this resource. Finally, I would like the Board to address the issues of cumulative impacts and monitoring in a fashion that will assure that sufficient resource protections are in place and that they are operating as intended.

In the long-term, I hope to be able to affect the sense of uncompromising conflict and gridlock that currently characterizes large areas of timber harvest and forestry regulation in California. The issues I have described above and others are both complex and controversial, generally pitting economic against environmental values. The difficulty of the issues should not, in my view, preclude efforts at resolution that will allow a viable timber industry to continue in the state while at the same time protecting the state's valuable natural resources. A viable timber industry on private lands can provide both economic and environmental benefits.

The Board of Forestry and Fire Protection can play an important but not the only role in moving forward. The Department must be responsive to public and industry concerns regarding the manner in which it implements its statutory and regulatory responsibilities. The Board can seek to utilize its regulatory and oversight powers to enhance the responsiveness of the Department and consequently the confidence of the public and industry in the Department. Increased staffing for the Board will greatly facilitate efforts in this regard.

Increased regulatory certainty and efficiency can reduce costs to industry and can be coupled with substantive measures that assure adequate resource protection. Given staffing and financial constraints and the institutional separation of the Board and the Department, moving forward and taking the lead in forging the basis for a level of consensus on important issues will remain difficult, but I believe that in the long run it is a goal of critical importance.

New Initiatives

At its May meeting, based on a report and recommendation from the Policy and Management Committee, the Board scheduled consideration of the issues of conservation of oak woodlands, old growth, and clear-cutting at its June, July and August meetings respectively. The Board will hear presentations from the Department and interest groups to provide varying perspectives on the need for and means of addressing the issues, and it is anticipated that the Board will provide direction as to next steps, which may include referral to the appropriate policy committee for the development of regulatory proposals.

In addition to the above three issues, I believe the Board should address the issue of cumulative impacts. Although consideration of this issue is not presently scheduled, the Board anticipates taking it up in the next several months.

Timber Harvesting and Water Quality

The Memorandum of Understanding (MOU) between the State Water Resources Control Board (SWRCB), the Department, and Designated Regional Boards provides a clear delineation of the roles and responsibilities of the signatory agencies. The MOU should foster a high level of coordination among the agencies in addressing water quality impacts of timber harvesting. To the extent this does not result and instances of conflict and/or lack of coordination occur, the MOU should provide a template for analyzing and remedying any problems. These procedural aspects of the MOU should reduce problems between the regional boards (assuming that they execute the MOU) and the Department.

The MOU provides that within six months, the parties will meet to address cumulative impacts and monitoring. A coordinated and effective approach to these issues will enhance the impact of the MOU. I believe that the agency cooperation and coordination envisioned in the MOU, enhanced by subsequent agreements on monitoring and cumulative effects, should result in improved water quality.

In addition to the coordination set out in the MOU, the Board and the SWRCB are scheduled to meet jointly in June. I understand that regional board representatives will be invited to attend the joint meeting. This should provide a means of effectuating and underscoring the desire of both boards for good communication.

Clear-Cutting

In appropriate circumstances, clear-cutting may provide silvicultural benefits. However, depending on scale, location, and other factors, intensive clear-cutting has the potential to effect water quality and other values in the Sierra. The potential that these impacts will result from existing and future clear-cutting activities should be thoroughly analyzed and measures implemented to assure that any clear-cutting does not result in environmental degradation.

I do not favor clear-cutting on a scale or intensity that will result, individually or cumulatively, in adverse effects on water quality, wildlife habitat, and other resource values

Cumulative Impacts

The Board has adequate statutory authority to deal with cumulative impacts. Pursuant to CEQA, environmental review of an individual project (such as a THP) must evaluate the cumulative impacts of the project, in addition to its individual impacts, and THPs may be conditioned to address cumulative impacts.

Cumulative impacts may be addressed by conditioning the rate and/or timing of harvest, which can be of benefit both to assuring a sustainable supply of timber and to providing protection for the environment. In addressing this issue, I believe the Board should consider the effectiveness of existing regulatory provisions, and differences in conditions that would affect appropriate harvest rate and timing in different areas.

Sudden Oak Death

The Board has consistently recognized the seriousness of sudden oak death (SOD) and supported efforts to understand and control the infestation. In February 2001, the Board directed the Department to work with the Oak Mortality Task Force and other state agencies to develop the most appropriate management practices to reduce the risk of spread and provide for hazard abatement in areas affected by SOD. Pursuant to Board direction, the Department reports regularly to the Board on SOD, and the Board has directed the Department to ensure that its activities are in compliance with the SOD regulations issued by the Department of Food and Agriculture.

The Board has not directly requested money to fight SOD, but it has supported requests for funding to support the activities of the Oak Mortality Task Force.

Oak Woodlands

I believe that the Board has the statutory authority to address the loss of oak woodlands and require mitigation in appropriate circumstances.

I believe oak woodlands are a valuable resource that should be conserved. The Board will consider information regarding this issue at its June meeting. Among other factors the Board will consider is the view of the Department that a regulatory program to address oak woodlands would be difficult to develop and implement, particularly in light of constrained resources.

Board of Forestry's Policy Committees

Board policy committees address issues within their purview. They develop recommendations regarding rules and regulations, evaluate and monitor implementation of on-going programs, and bring to the Board issues and recommended actions for full Board consideration. The committees meet regularly once each month on the day preceding meetings of the full Board, and at other times as the respective chairs may designate. Their meetings are public, and each committee presents an oral report of its meetings to the full Board in public session.

Generally there is no specific timeline for issues considered by committees.

Committee members are designated by the Board chair.

California State Personnel Board

Maeley Tom

STATEMENT

Role of the California State Personnel Board (CSPB)

The CSPB is an independent constitutional agency responsible for ensuring that the State has an effective and efficient merit civil service system. These responsibilities include 1) the establishment of qualifications for state positions, outreach and recruitment activities to attract candidates 2) the development and administration of entry and promotional examinations and 3) providing the review and the adjudication of disciplinary actions involving state employees as well as providing resolutions of a variety of appeals and complaints filed by employees, unions, job applicants and citizens.

The CSPB also directs the state civil service equal opportunity program and monitors and provides guidance and assistance to state departments on providing adequate language assistance to clients and customers with limited English speaking skills.

Finally, the CSPB ensures that local welfare, emergency services and child support services programs comply with the federal merit system funding requirements by administering these local personnel systems or by auditing these programs for continued compliance with state and federal requirements.

SHORT AND LONG TERM CHALLENGES FACING THE CSPB

As a member of the State Personnel Board, I will work with my fellow board members and the CSPB staff in addressing the following long term and short term challenges:

Addressing the impact of the state's fiscal problems on the programs of the CSPB and the departments.

The CSPB will have 40% fewer general fund dollars and 1/3 fewer positions available for the next fiscal year. The reduced resources for the department will require the elimination, curtailment and/or innovative reconfiguration of critical programs of the departments to ensure that merit is protected in the civil service system and our constitutional duties are fulfilled. The CSPB is in the process of

assessing the impact of the reduced resources on our programs and responsibilities.

Many of the departments are facing similar resource reductions and we also anticipate working with these departments on the subsequent impact on their employees, job classifications and future skill needs.

Creating and administering an efficient system to handle the placements and potential layoff of state employees.

Most state departments will have far fewer resources available for the next fiscal year. It is also anticipated that many of the departments will face the potential of a major staff reductions and layoffs during 2003-04. The CSPB has a critical role in the review of the layoff plans and placement of employees on reemployment and surplus employment lists.

If major layoffs occur, we will be working with departments, labor organizations and unions to ensure that an efficient system is in place at the CSPB.

Achieving a diverse workforce.

Last year the legislature enacted SB 1045 that promotes the achievement of a diverse work force through inclusive focused outreach and recruitment efforts by public agencies. Additionally, this year the United States Census Bureau will release data on the composition of the California labor force.

We anticipate that the data will show sharp increases in the representation of Asian/Pacific Islanders and Hispanics in the labor force. Sharp increases in the representation of women in the labor force are also anticipated.

While the current budget climate will limit CSPB resources, the CSPB is committed, over time, to the achievement of a diverse work force. We will need to focus on working with the departments and advocate organizations to develop efficient programs to widely promote employment opportunities to all of our communities..

Improving the quality of the state's selection systems.

Recent studies and audits of delegated testing programs administered by departments have revealed a number of problems with the entry and promotional tests developed and administered by the departments. The CSPB will be looking at long-range strategies for improving the training and support provided to departmental testing staff and increasing the test guidance and oversight we provide to departmental testing programs.

Increased use of automation to expedite system

The CSPB has been a nationwide leader in the use of automation in our personnel system. I believe that even greater use of automation will permit the CSPB and the departments to expedite civil service processes and decision-making and help with our efforts to handle increasing workloads with diminishing resources.

Our current legacy systems have reached capacity and CSPB will need to develop a long-term strategy for replacing the system and increasing our ability to provide timely services to the departments, employees and our applicants.

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WEDNESDAY, JUNE 11, 2003

1:35 P.M.

Reported by:

Evelyn J. Mizak
Shorthand Reporter

APPEARANCESMEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

CARY RUDMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

HAROLD A. ROSE, Member
Industrial Welfare Commission

AARON READ
CDF Firefighters Association

PERRY KENNY, President
California State Employees Association

PETER COOPER
California Labor Federation, AFL-CIO

MARCY V. SAUNDERS, Member
Occupational Safety and Health Appeals Board



1 SCOTT WETCH
2 California State Pipe Trades Council
3 State Association of Electrical Workers
4 Western States Council of Sheetmetal Workers
5

6 A. JOHN SHIMMON, Member
7 Workers' Compensation Appeals Board
8

9 DOUG KIM
10 California Applicant Attorneys Association
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
HAROLD A. ROSE, Member Industrial Welfare Commission	1
Background and Experience	1
<u>Witness in Support:</u>	
AARON READ CDF Firefighters	1
Questions by CHAIRMAN BURTON re:	
Granting of the Eight Hour Exemption to 24-hour Care Centers	2
Verification of Care Centers' Financial Problems	2
Effect of Exemption	4
People Working 13-hour Shifts	5
Questions by SENATOR JOHNSON re:	
Overtime Pay for 13 th Hour	6
Questions by CHAIRMAN BURTON re:	
Request for Exactly What the Exemption Granted	7
Request that Commission Confirm Any Hardship Pleas	7
Vote on 8-hour Exemption	8
Questions by SENATOR JOHNSON re:	
Prevailing Wage	8

1 Witnesses in Support:

2 PERRY KENNY, President
3 California State Employees Association 9

4 PETER COOPER
5 California Labor Federation, AFL-CIO 9

6 Motion to Confirm 9

7 Committee Action 10

8 MARCY V. SAUNDERS, Member
9 Occupational Safety and Health Appeals Board 10

10 Goals and Accomplishments 10

11 Questions by CHAIRMAN BURTON re:

12 Recipient of Money from Increased
13 Penalties 12

14 Access to OSHA Appeals Board's
15 Precedent Decisions on Internet 12

16 Duration of Vacancy on Board 12

17 Statements by SENATOR ROMERO re:

18 Need to Address Vacancies on
19 Boards and Commissions 13

20 Questions by SENATOR KARNETTE re:

21 Number of Sustained Appeals after
22 Passage of AB 1127 14

23 Witnesses in Support:

24 PETER COOPER
25 California Labor Federation, AFL-CIO 16

26 SCOTT WETCH
27 California State Pipe Trades Council
28 State Association of Electrical Workers
29 Western States Council of Sheetmetal Workers 16

Motion to Confirm	17
Committee Action	17
A. JOHN SHIMMON, Member Workers' Compensation Appeals Board	17
Introduction by CHAIRMAN BURTON	17
Background and Experience	18
Questions by CHAIRMAN BURTON re:	
View on Effectiveness and Efficiency of Board	18
<u>Witness in Support:</u>	
DOUG KIM California Applicants Attorneys Association	18
Motion to Confirm	19
Committee Action	19
Termination of Proceedings	19
Certificate of Reporter	20
APPENDIX: Appointees' Statements of Goals	
HAROLD A. ROSE	21
MARCY V. SAUNDERS	22
A. JOHN SHIMMON	27



1 P-R-O-C-E-E-D-I-N-G-S

2 --ooOoo--

3 CHAIRMAN BURTON: Governor's appointees required
4 to appear, Harold Rose. Go ahead, sir.

5 MR. ROSE: MR. ROSE: Thank you, Senator.

6 While a member of the Industrial Welfare
7 Commission, I will continue to work for the lower paid workers
8 of the State of California.

9 Since the last time I was here to be confirmed,
10 we've handled the sheepherders, we've gone with health care
11 workers, construction industry, nurses, and so on.

12 About a month-and-a-half ago we tried to raise
13 the minimum wage again, but you know how that goes, Senator,
14 when you don't have the votes. We didn't, and we didn't get to
15 raise it. I wanted to raise it to eight dollars over two years.

16 Now I look favorably upon Senate Bill 57, and you
17 know what that is, and that's bringing in the Consumer Price
18 Index.

19 With that, that's the end of my statement.

20 I have on my left here Aaron Read.

21 CHAIRMAN BURTON: Aaron.

22 MR. READ: Thank you, Mr. Chairman and Members,
23 Aaron Read.

24 I've known Harold for 30 years, worked with him
25 for 10 years on state employee issues, and 25 years ago, started
26 representing the organization which he was a founding member of,
27 and that's the CDF Firefighters. He is a part of that
28 organization for 30 years, and he's now a retiree, and he's



1 still active in that organization.

2 I've worked with him on a lot of issues that
3 benefit working men at women in California. I'm here to lend
4 the support of the CDF Firefighters.

5 And their President would be here to testify in
6 person, but his son is graduating from high school today.

7 Thank you.

8 CHAIRMAN BURTON: Could you explain the thinking
9 when the Commission granted eight hour exemptions, you know, the
10 24-hour care centers?

11 MR. ROSE: Yes. The 24-hour home health care,
12 and 15 beds or less, and supposedly they are financially
13 strapped. Their State Fund Insurance is going up, everything's
14 going up, naturally. And they were either not getting money
15 from the state or SSI, and so it's dropping back on their
16 income.

17 So, we gave them an exemption for two years to
18 see if we could help them out. They have two years for that
19 exemption, and that's it.

20 CHAIRMAN BURTON: Well, supposedly, or did
21 somebody look at the books and determine?

22 MR. ROSE: I didn't hear you.

23 CHAIRMAN BURTON: I thought I heard that
24 supposedly they were in financial straits. That's because
25 they said they were, or did somebody check the books to see if
26 they were?

27 MR. ROSE: That's because they said they were,
28 Senator.



1 CHAIRMAN BURTON: I mean, the Commission just
2 takes everybody's word?

3 MR. ROSE: No, sir. I went out on my own, and
4 went to the State Fund and found out how much they paid, and how
5 much it's going to go up in the next year per employee. And
6 it's going from one -- one 15-bed home would go from \$7,000 to
7 \$21,000 in comp, so I conceded the rates are going up.

8 CHAIRMAN BURTON: I'm not saying they didn't, but
9 rates could be going up, and they could still be making money.

10 MR. ROSE: That's true.

11 CHAIRMAN BURTON: I'm not saying they are, but if
12 somebody comes in and pleads hardship, do they or do they not
13 have to show you the books to show they're in hardship?

14 MR. ROSE: They did not show us the books,
15 Senator.

16 CHAIRMAN BURTON: If they're pleading hardship,
17 shouldn't they have to demonstrate that? Sure, their cost of
18 business is going up, but, you know, that probably would mean
19 that they're in hardship, but it doesn't necessarily prove it.

20 MR. ROSE: I understand that. And we did not ask
21 them to see their books. They brought in paperwork, and we
22 looked at that, and that's what we accepted.

23 CHAIRMAN BURTON: And what was the paperwork?

24 MR. ROSE: Pardon?

25 CHAIRMAN BURTON: What did the paperwork do?

26 MR. ROSE: The paperwork showed that the cost of
27 like taxes, and electric, and --

28 CHAIRMAN BURTON: I understand that. How about

1 it showed whether their income was doing anything?

2 In other words, if I'm taking in a lot of money,
3 and I have to pay out more money, maybe I'm upside-down, or
4 maybe the fact that I'm taking in more than money doesn't put me
5 upside-down with my payout going more.

6 I think you'd have to look at both sides, not
7 just one.

8 MR. ROSE: I understand that. Like I say, we
9 took them at their word.

10 CHAIRMAN BURTON: I know you did. We're kind of
11 looking forward. I just think that if someone claims hardship,
12 in my judgment, they ought to demonstrate it, not just that
13 their bills have gone up. Because sometimes, even if their
14 bills didn't go up, their income could have gone down. Hardship
15 ought to be demonstrated by their books, not demonstrated by the
16 fact that something's going up.

17 MR. ROSE: I understand that.

18 CHAIRMAN BURTON: Are you going to carry that
19 back to the --

20 MR. ROSE: I will certainly carry that back to
21 the IWC.

22 CHAIRMAN BURTON: So, what did the exemption do?

23 MR. ROSE: It allowed them to work more hours and
24 not pay overtime.

25 CHAIRMAN BURTON: More than 40 hours? More than
26 eight hours a day?

27 MR. ROSE: No, more than eight hours in a day.

28 CHAIRMAN BURTON: How many more, 18?



1 MR. ROSE: Twelve hours a day.

2 CHAIRMAN BURTON: So, they would do three 12-hour
3 shifts and one 4-hour shift?

4 MR. ROSE: Three 12s. Sometimes some of these
5 places pay for the 40 anyway. But it would be three 12s, and
6 there's some where they would work like 13 hours because they're
7 going between shifts.

8 CHAIRMAN BURTON: What do you mean they're going
9 between shifts?

10 MR. ROSE: Well, they would overlap. In other
11 words, you work your 12 hours, and then you would stay for
12 another hour.

13 CHAIRMAN BURTON: So there're people working 13
14 hours.

15 MR. ROSE: That's correct.

16 CHAIRMAN BURTON: So, you granted 13 hours.

17 MR. ROSE: No, we gave them 12 hours, but they've
18 got to get paid for 40, so they have to actually put in 4 hours
19 somewhere along the line.

20 CHAIRMAN BURTON: They put in four hours on
21 another day, or they're doing --

22 MR. ROSE: One hour each day, which counts for
23 three.

24 CHAIRMAN BURTON: So, you granted them 12, and
25 you're letting them do 13?

26 MR. ROSE: That's not the intention, sir.

27 CHAIRMAN BURTON: That seems to be what you're
28 telling me.



1 MR. ROSE: I understand that. I guess I don't
2 understand.

3 CHAIRMAN BURTON: Which part, the question or the
4 answer?

5 MR. ROSE: The answer, I guess. Obviously I
6 understand the question.

7 CHAIRMAN BURTON: I'm just trying to understand
8 what you did. You did what you did, so it's done.

9 You grant them an exemption from an 8-hour day
10 for whatever reasons.

11 MR. ROSE: Yes, that's correct.

12 CHAIRMAN BURTON: But you limit it to 12 hours a
13 day.

14 MR. ROSE: Yes.

15 CHAIRMAN BURTON: But you're allowing them to go
16 above the limit to 13.

17 MR. ROSE: If that's what it takes to get it to
18 40 hours, yes, sir. Someplaces, they pay 36.

19 CHAIRMAN BURTON: Why don't you let them just
20 work 40 hours straight? If you're a fireman you can do that.
21 Why not just let them work 40 hours straight?

22 You're giving them an exemption to 12 and letting
23 them go beyond the exemption.

24 MR. ROSE: I understand that.

25 CHAIRMAN BURTON: Well, you shouldn't do that.

26 SENATOR JOHNSON: Do they get overtime pay for
27 the 13th hour?

28 MR. ROSE: No, they do not.

1 SENATOR JOHNSON: Then it's 13 hours.

2 CHAIRMAN BURTON: I know, but they granted 12.

3 SENATOR JOHNSON: They granted 13.

4 CHAIRMAN BURTON: No, you granted 12, right?

5 MR. ROSE: I guess that part I do not understand,
6 Senator.

7 CHAIRMAN BURTON: You don't understand what the
8 order was?

9 MR. ROSE: I don't have it in front of me, no.

10 SENATOR KARNETTE: It would be 39 hours in three
11 days.

12 CHAIRMAN BURTON: I guess; I don't know.

13 SENATOR KARNETTE: That extra hour, it's a
14 missing hour.

15 CHAIRMAN BURTON: I'd like to know exactly what
16 the order was, what you did, and how it's enforced. That's one.

17 Two, I want to know from now on, when people come
18 in and plead hardship, they ought to have to prove it. Because,
19 as I said, maybe their expenses even went down, but if their
20 income goes down, they've got hardship. So, hardship ought to
21 be proven whether their expenses go up or whether they go down,
22 or whatever.

23 I want to see the order, know what it was, and
24 know how you went from 8 to 12 to 13, and three 13s are 39, as
25 Senator Karnette so aptly pointed out. I don't know where they
26 pick up the one, or what they do. Or maybe they get docked for
27 it.

28 This has got a two-hour sunset on it?



1 MR. ROSE: A two-year sunset.

2 CHAIRMAN BURTON: I'm sorry, a two-year sunset.

3 It was a three-two vote?

4 MR. ROSE: Correct.

5 CHAIRMAN BURTON: You were with the three or the
6 two?

7 MR. ROSE: I was with the two.

8 CHAIRMAN BURTON: And the three were who?

9 MR. ROSE: Domborwski, Leslee and Bosco.

10 CHAIRMAN BURTON: You can't beat Bosco. I hope
11 he comes up for confirmation.

12 Senator Johnson.

13 SENATOR JOHNSON: Do you folks deal with the
14 issue of prevailing wage?

15 MR. ROSE: Yes.

16 SENATOR JOHNSON: And definitions of prevailing
17 wage.

18 MR. ROSE: I'm sorry?

19 SENATOR JOHNSON: And definitions of what
20 classifications local governments must apply the prevailing wage
21 standards to?

22 MR. ROSE: No, that's not our purview.

23 SENATOR JOHNSON: You just answered the first
24 part of the question in the affirmative.

25 MR. ROSE: I didn't know where you were going.

26 SENATOR JOHNSON: So, you have nothing to do with
27 prevailing wage in contrast to your earlier answer?

28 MR. ROSE: No.



1 SENATOR JOHNSON: No other questions, Mr.
2 Chairman.

3 CHAIRMAN BURTON: Senator Romero.

4 SENATOR ROMERO: No questions.

5 CHAIRMAN BURTON: Senator Knight.

6 SENATOR KNIGHT: No questions.

7 CHAIRMAN BURTON: Senator Karnette.

8 SENATOR KARNETTE: No questions.

9 CHAIRMAN BURTON: You have your family here, I
10 believe?

11 MR. ROSE: Yes, I do. I have my wife, Bruna, in
12 the back.

13 CHAIRMAN BURTON: Witnesses in support?

14 MR. KENNY: We're still trying to figure out how
15 no count to 13, and we're late to the conversation.

16 CSEA, Perry Kenny, President, in support.

17 MR. COOPER: Peter Cooper on behalf the
18 California Labor Federation in support.

19 CHAIRMAN BURTON: Witnesses in opposition?

20 Move the nomination.

21 SECRETARY WEBB: Senator Karnette.

22 SENATOR KARNETTE: Aye.

23 SECRETARY WEBB: Karnette Aye. Senator Knight.

24 SENATOR KNIGHT: Aye.

25 SECRETARY WEBB: Knight Aye. Senator Romero.

26 SENATOR ROMERO: Aye.

27 SECRETARY WEBB: Romero Aye. Senator Johnson.

28 SENATOR JOHNSON: Aye.



1 SECRETARY WEBB: Johnson Aye. Senator Burton.

2 CHAIRMAN BURTON: Aye.

3 SECRETARY WEBB: Burton Aye. Five to zero.

4 CHAIRMAN BURTON: Congratulations.

5 MR. ROSE: Thank you, sir.

6 CHAIRMAN BURTON: Give me that information.

7 MR. ROSE: I will get that information to you.

8 CHAIRMAN BURTON: Is Marcy here? Go ahead.

9
10 MS. SAUNDERS: My name is Marcy Saunders. I'm
11 addressing this to the Chair of the board, John Burton, and the
rest of the Members.

12 Previously I had sent you a five or six page
13 presentation in which I had explained to you what the Board has
14 accomplished in the last close to three years that I have been
15 on the Cal OSHA Appeals Board. And I also explained to you what
16 some of my short and long term endeavors were if I were to be
17 reappointed.

18 I am not sure if I'm going to be boring you, or
19 if you even want to hear it, but I will give you a few
20 highlights of what we have done.

21 Among some of the short things we did was that we
22 found that one of the problems that we had at the Appeals Board
23 was a real lack of communication between the legal department,
24 the administrative law judges, and our administration division.
25 And we changed that immediately, whereby the legal department
26 and the administrative law judges answer directly to the Board,
27 rather than going through the administrator. We found that that
28 was a very slow process. The administrator had no legal



1 background, and that the legal department was there for our
2 consultation, and of course the administrative law judges at our
3 direction.

4 Second of all, when I came on board I was
5 absolutely shocked when I looked at our Decisions After
6 Reconsideration. The Board takes those decisions to be of
7 preeminent importance because they are precedent setting
8 decisions whereby employers, DOSH, and the administrative law
9 judges can look to those decisions, because they are precedent
10 setting, in making their decisions or abiding by their laws.

11 At the time, we had DARs dating back to 1994, and
12 that was 2000 when I came on board. We were averaging
13 approximately 40 DARs per year, which I thought was inexcusable.
14 We then hired a new Chief Counsel and two attorneys for our
15 legal department. And I'm very pleased to say that in less than
16 two years, we have accomplished writing over 243 DARs, which was
17 something that really needed to be done.

18 I will tell you that we are not as efficient as
19 we would like to be. And, of course, I'm sure you hear that
20 from almost anybody that comes before you. But once AB 1127 was
21 passed, it did cause a lot of difficulties for the Appeals Board
22 in the respect that our appeals rose by 62 percent with no
23 additional staff whatsoever, neither support staff nor more
24 administrative law judges. That has made that very difficult
25 for us.

26 In fact, since AB 1127 has been passed, we lost
27 three of our support staff, and had to go through 18 months of
28 bureaucracy to get at least two of those positions back. And we



1 have now lost two more of our administrative law judges.

2 We are not regulated by the law or regulations as
3 to how quickly we have turn these cases around. However, we had
4 given ourselves the self-imposed time of eight to nine months,
5 which I felt was very fair both to the enforcement division,
6 being DOSH, and also the employers.

7 However, since the passage of 1127, and the fact
8 that we have no extra staff, I will be very honest in telling
9 you that our self-imposed turn-around time of eight to nine
10 months is now anywhere from 16 to 18 months.

11 CHAIRMAN BURTON: Who gets the money from
12 increased penalties?

13 MS. SAUNDERS: The General Fund of the State of
14 California.

15 CHAIRMAN BURTON: There have been some concerns
16 raised about the inability for people to get the Appeals Board
17 precedent decisions. The UI Board maintains a comprehensive
18 index. The OSHA Appeals Board only has recent precedent
19 decisions on the Internet.

20 I guess it costs a lot of money to put all the
21 precedent decisions on the Internet?

22 MS. SAUNDERS: No. In fact, that is something
23 that we actually have started to do, and they will be on the
24 Internet.

25 CHAIRMAN BURTON: There's three members?

26 MS. SAUNDERS: It's a three-member board.

27 CHAIRMAN BURTON: How long has there been a
28 vacancy.

1 MS. SAUNDERS: Well, I've been on the Board for
2 three years. There's been the vacancy the whole time. In fact,
3 the vacancy is the Chair position. So, for the last
4 two-and-a-half years, I have been the Acting Chair on the
5 Board.

6 It makes for the other Board member and I having
7 to get along extremely well.

8 CHAIRMAN BURTON: Isn't he O'Hara?

9 MS. SAUNDERS: Yes.

10 CHAIRMAN BURTON: You've been vacant for three
11 years?

12 MS. SAUNDERS: Yes.

13 CHAIRMAN BURTON: Senator Johnson.

14 SENATOR JOHNSON: No questions.

15 CHAIRMAN BURTON: Senator Romero.

16 SENATOR ROMERO: I have no questions, but I do
17 think the question of the vacancies, not only on this commission
18 but on a series of commissions, I just think it's a serious
19 issue for California, for accountability. And I think we need
20 to address that issue very carefully.

21 I don't know how business gets done in California
22 and accountability is maintained in California if we can't have
23 boards functioning.

24 Again, too, if the appointments won't come
25 forward, I think there's some ideas here to have the Senate step
26 in and put some folks forward to at least get these boards
27 going.

28 CHAIRMAN BURTON: Senator Karnette.



1 SENATOR KARNETTE: I know that AB 1127 increased
2 the fines, and as a result we have a lot of people, a lot of
3 employers, appealing, I suppose as a result. Maybe they would
4 appeal anyway, but can you give us an idea of how many of those
5 appeals are sustained?

6 MS. SAUNDERS: Okay. I need to explain
7 something, and that is, I'm sure you're all aware of this, but
8 maybe I should still bring it up.

9 Sometimes there's a real gray area between DOSH,
10 the division, and the Appeals Board. And we are totally
11 separate. We have absolutely nothing to do with DOSH, except
12 when they come to us as a party to an appeal.

13 However, what does happen is, DOSH will give out
14 their citations, and maybe every once in awhile you might have a
15 field operative that may be a little bit over zealous, or may at
16 times write up the wrong citation, even though something has
17 been done.

18 What happens is, they have 15 days, the employer,
19 to appeal the citation. And once we get that within 15 days, we
20 docket it within a certain amount of days.

21 Now, in between that, it does not stop DOSH and
22 the employer from having an informal conference. And at that
23 time, if DOSH so chooses, or feels that they may have made some
24 mistake in the citation, they will drop that citation. And they
25 have the right to do that because the appeal has not hit our
26 administrative law judges or the Board itself at that point.

27 Also, many times they will write what are called
28 stipulations, which come directly to the Board, and we sign off



1 on them. I know that sometimes they probably get a little upset
2 with Mr. O'Hara and myself because we're very hands-on Board
3 members. We read every single stipulation, decision, order that
4 comes before us. Many times I return those stipulations to
5 DOSH and tell them that they have to give me a better
6 explanation as to why the stipulation is being -- the citation
7 is being dropped so much in the stipulation.

8 Now, to give you you an example. I can tell you
9 that I did have a survey, or I had them put together from
10 January to July in the year 2002 what the citations were that
11 DOSH wrote.

12 CHAIRMAN BURTON: You're getting to the boredom
13 level, Marcy.

14 MS. SAUNDERS: All right.

15 It was \$6 million dollars -- excuse me, John --
16 it was \$6 million dollars from DOSH. By the time it got to us,
17 it was only 2,800,000. And by the time we finished it, it was
18 still 2,650,000.

19 So as you see, DOSH acts like any other court. I
20 mean, you've got DOSH as a district attorney, and you've got the
21 attorneys for the employers, and they're the defense. They cut
22 a deal, and as long as it's within the legal boundaries, what
23 comes before us then, you know, we or our ALJs will go along
24 with it.

25 The other part of it is, lots of times before
26 1127 the proof was on DOSH. Now the proof is the on the
27 employer. So, it's inevitable with that happening, we're going
28 to get over a 60 percent increase.



1 SENATOR KARNETTE: I don't want to talk very much
2 more, but I do want to say that no matter what we do with what
3 we are doing, it seems like we're just going to be increasing
4 your need for more time and more help. This bothers me. I
5 don't think we can do anything about it right now, but I don't
6 know how we stop this flow of time eating.

7 CHAIRMAN BURTON: Senator Knight.

8 SENATOR KNIGHT: No questions.

9 CHAIRMAN BURTON: Witnesses in support?

10 MR. COOPER: Peter Cooper, California Labor
11 Federation. We support this nomination.

12 MR. WETCH: Scott Wetch, on behalf of the
13 California State Pipe Trades Council, and the State Association
14 of Electrical Workers, as well as the Western States Council of
15 Sheetmetal Workers, in strong support of Board Member Saunders.

16 She's a little bit modest in her explanation of
17 some of the things that they've accomplished at the Board under
18 her term there. The expansion of the legal unit there, and
19 bringing in more experienced legal staff, has really changed the
20 way that process has worked to the benefit of both the employer
21 community as well as the labor side.

22 Not only have the Decisions After Reconsideration
23 increased, but the timeliness in which they have been brought to
24 conclusion has been expedited considerably, which is of great
25 benefit to those employers that are hanging out there, waiting
26 for their decisions to be made.

27 For those reasons, we urge confirmation.

28 Thank you.



1 CHAIRMAN BURTON: Witnesses in opposition?

2 I'll move the nomination.

3 SECRETARY WEBB: Senator Karnette.

4 SENATOR KARNETTE: Aye.

5 SECRETARY WEBB: Karnette Aye. Senator Knight.

6 SENATOR KNIGHT: Aye.

7 SECRETARY WEBB: Knight Aye. Senator Romero.

8 SENATOR ROMERO: Aye.

9 SECRETARY WEBB: Romero Aye. Senator Johnson.

10 SENATOR JOHNSON: Aye.

11 SECRETARY WEBB: Johnson Aye. Senator Burton.

12 CHAIRMAN BURTON: Aye.

13 SECRETARY WEBB: Burton Aye. Five to zero.

14 CHAIRMAN BURTON: Congratulations, Marcy.

15 MS. SAUNDERS: Thanks, John.

16 CHAIRMAN BURTON: John Shimmon.

17 I'd like to just take the prerogatives of the
18 Chair to introduce John Shimmon to the Committee.

19 We have known each other for many, many years.

20 We have been friends.

21 John was Chief Deputy to the Board member of the
22 Board of Equalization for many years in the San Francisco
23 office. Prior to that, he was accountant and auditor with the
24 Board of Equalization.

25 I'm very happy to present John to the
26 Committee.

27 MR. SHIMMON: Thank you.

28 My name is John Shimmon. I want to thank Gray



1 Davis for giving me this opportunity to serve the people of
2 California on the State Workers Compensation Appeals Board.

3 I'm a native San Franciscan, 80 years old, served
4 in combat in World War II, a San Francisco State University
5 graduate. Received a BA degree marked with honor.

6 Worked for the State Board of Equalization for
7 over 37 years, from a junior accountant auditor at 231 bucks a
8 month, and rose to highest nonelective job as Deputy to Board
member George Riley.

10 CHAIRMAN BURTON: In the time that you've been on
11 the Comp Appeals Board, how do you view the effectiveness as to
12 how they operate from an efficiency standpoint, if you put on
13 your auditor's hat?

14 MR. SHIMMON: They're very efficient. We have
15 three Commissioners that review each case, and all the
16 Commissioners have to be in concurrence. So, we have a daily
17 load of about nine cases, and some of the files are about ten
18 inches high. So, we review the facts and the law, and then we
19 render an impartial and fair decision.

20 CHAIRMAN BURTON: Senator Johnson.

21 SENATOR JOHNSON: No questions.

22 CHAIRMAN BURTON: Senator Romero.

23 SENATOR ROMERO: No questions.

24 CHAIRMAN BURTON: Senator Knight.

25 SENATOR KNIGHT: No questions.

26 CHAIRMAN BURTON: Witnesses in support?

27 MR. KIM: Senator Burton, Members, Doug Kim on
28 behalf of the California Applicants Attorneys Association.



1 We support this nomination.

2 I wanted to bring the apologies of our President,
3 Rick Wooley, who planned to be here, but his plane was grounded
4 at the last minute because of mechanical difficulties in the
5 plane.

6 CHAIRMAN BURTON: They call it equipment
7 failure.

8 Witnesses in opposition?

9 Hearing none, move the nomination.

10 SECRETARY WEBB: Senator Knight.

11 SENATOR KNIGHT: Aye.

12 SECRETARY WEBB: Knight Aye. Senator Romero.

13 SENATOR ROMERO: Aye.

14 SECRETARY WEBB: Romero Aye. Senator Johnson.

15 SENATOR JOHNSON: Aye.

16 SECRETARY WEBB: Johnson Aye. Senator Burton.

17 CHAIRMAN BURTON: Aye.

18 SECRETARY WEBB: Burton Aye. Four to zero.

19 CHAIRMAN BURTON: Congratulations, John.

20 [Thereafter, SENATOR KARNETTE

21 voted Aye, making the final

22 vote 5-0 for confirmation.]

23 [Thereupon this portion of the

24 Senate Rules Committee hearing

25 was terminated at approximately

26 2:02 P.M.]

27 --ooOoo--



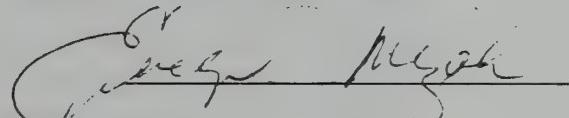
1 CERTIFICATE OF SHORTHAND REPORTER

2
3 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Rules Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 12th day of June, 2003.

14
15
16
17 
18 EVELYN J. MIZAK
19 Shorthand Reporter

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21
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24
25
26
27
28



Harold A. Rose
729 Warren Lane
Santa Rosa, CA 95401-5412
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Har4@juno.com

May 30, 2003

Sent Via Fax

Senator John Burton
State Capitol Room 420
Sacramento, CA 98514

Re: Short and Long Term Goals

Dear Senator Burton:

I believe that a short-term goal for the Industrial Welfare Commission is to raise the minimum wage of the California worker. The Industrial Welfare Commission has a duty and responsibility to see that the lowest paid workers in California achieve a livable wage. There are eleven states that pay more than the Federal minimum wage and California ranks fifth. The more money these California workers make, the more taxes they pay.

A long-term goal would be to see that the health care industry received fair compensation from State of California for the care of those who are elderly, developmentally disabled and mentally ill. These adults need to be given the best care available. With the budget situation we are now living through the health care industry is receiving less money per patient. That means there will be layoffs or at least a reduction in staffing. This places people on unemployment and maybe welfare. These workers will produce less tax revenue for the State of California.

I look forward to answering any other questions that you may have.

Sincerely,

Harold A. Rose

Harold A. Rose

STATE OF CALIFORNIA - DEPARTMENT OF INDUSTRIAL RELATIONS

GRAY DAVIS, Governor

OCCUPATIONAL SAFETY
AND HEALTH APPEALS BOARD
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May 27, 2003

Senator John Burton, President Pro-Tempore,
California State Senate
Chairman, Rules Committee
State Capital, Room 420
Sacramento, California 95814

Attention: Nettie Subelhause
Rules Committee
Appointments Director

As a Governor Appointee for a position on the California Occupational Safety and Health Appeals Board you have requested I share my short and long term goals as a Member of that Board.

Having already served on the Board since March 2000, a majority of the time as Acting Chairperson, I will first explain the goals and/or changes I accomplished during my first term.

As a new Member of the Board in 2000, I did not feel the chain of command made for an effective Division. The Chief Counsel and the Presiding Administrative Law Judge answered to the Director of the Division. The Director then referred all conversations to the Board. It was not an effective or efficient way to do business. We are a quasi-judicial division that deals on a daily basis with legal and policy decisions. I did not feel I was receiving first hand advice or guidance since the Director's position was administrative and did not require a legal background. After discussion with the other Board Member it was decided that the Presiding ALJ answers to the Board on all Hearing Operation issues, the Chief Counsel on all legal unit issues and the Director on all administrative issues. The Board now meets with all three people on a regular basis to discuss a myriad of issues concerning all three groups. We must have open and frequent dialogue on all issues concerning the equality of all our cases that have direct impact on the workers and employers in the state. Our conversations with the Executive Director deal with Administrative issues and interaction with other Divisions within the Department of Industrial Relations. I feel the changes in this area have made for a more effective Board.

When I became a Board Member, I was astounded at the huge backlog of Decisions After Reconsideration [DARs] that had not been acted upon by the Board. DARs are among the most important decisions the Board rules upon. They are precedential decisions that the Administrative Law Judges [ALJ] refer to when hearing cases. They also act as guidelines along with the regulations of the Director of the Department of Industrial Relations for the Division of Occupational Safety and Health [DOSH] when issuing citations. These DARs also set parameters for employers when overseeing the health and safety of their workers. We had DARs pending from 1994. This was grossly unfair to the workers and to the employers. The Act was intended to protect the health and safety of the workers, which is always foremost in my mind. However, the employers and DOSH, many times, found themselves in a gray area without to DARs or Denials being issued. The employers

continued to have a black mark on their safety records until the DARs were issued or denied and DOSH was in limbo as to what should be done under certain conditions. Most importantly, it left issues unanswered that had direct impact on the well being of the workers of California.

In 2001 the Board hired a new Chief Counsel and filled two open positions in the legal Division and in just over two years has written 223 DARs and Denials. This is a vast improvement over the average of 44 DARs and Denials on a yearly basis.

Because our Board is quasi-judicial we are not allowed to lobby or be lobbied by any individual or by organizations. Our opinions must be presented through our Orders, Decisions and DARs. We must, at all times, be objective in our decisions and base them on the testimony, evidence and arguments placed before us. I never "rubber stamp" a decision. I seriously weigh all cases that come before me. If I have unanswered questions or feel like I am making decisions in a vacuum, I never hesitate to pull the case up for consideration. I am, for all intents and purposes, a judge and must act objectively for all for all the parties involved.

The Board made changes in calendaring and redistributing the workload on the ALJs to improve the turn-around time for our Orders, Decisions and Denials.

Since implementing AB 1127 the workload has grown dramatically. Because of all the appeals as a result of the Bill our workload has nearly doubled. With no extra staff our turn-around on appeal Order and Decisions has slowed down somewhat. That is inevitable, but we are looking at different ways to alleviate the problem.

These have been the short an long-term goals I have accomplished during my first tenure with the Board.

I am now looking at a new term under very different conditions. We face a huge budget deficit that negatively impacts all the divisions in the state. My biggest goal under the present scenario is to keep what we have accomplished as the *status quo*.

My short-term goals in this term are:

1. To insure adequate support staff to handle the cases taken to Superior Court from the Board's DARs.
2. To insure an adequate number of ALJs to hear and determine appeals from citations promptly.
3. To review current forms and notices sent to employers regarding the appeal procedures before the Board and delineate the often blurred role of the Board as an independent adjudicatory agency from that of DOSH which is the enforcement arm under the Act. This will help clarify the procedures for the employers and help insure the appeals are received by the correct entity in the allotted time designated by law.

My long-term goals include:

1. Maintaining no more than 45 cases pending for reconsideration in order to insure timely and thorough review and disposition of the cases.
2. To review existing regulations pertaining to procedures for processing administrative cases before the Board for possible update to current conditions and/or consistency with other laws, e.g., procedures for issuance of pre-hearing subpoenas and production of

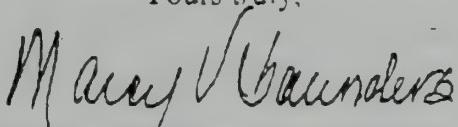
documents, notices to employees regarding appeal proceedings from citations issued to employers.

3. To continue with advancements started in increasing interaction and resources between the Hearing Operations Unit (ALJs) and the Legal Unit. In other words, more use of cross-utilizations. We must, however, be aware of civil service regulations and union contracts. Where acceptable cross-utilizations would help maintain an effective Board during the difficult economic times we are facing.

If you have any questions in regard to this presentation or other issues you deem to be of importance, please call me at 650-286-1616.

Also enclosed is a brief summary of some of the DARs recently issued that you might want to read.

Yours truly,



SIGNIFICANT DECISIONS AFTER RECONSIDERATION

1. FINANCIAL HARDSHIP TRILOGY — establishes parameters for determining employer's claims for monetary penalty relief based upon an employer's financial hardship. The new approach requires a factual showing of actual hardship (rather than vague assertions of "difficulties" or "inability" to pay the penalties) and greater scrutiny of such claims in order to insure due consideration of the objectives of the Act in promoting safety and health at the workplace for California workers. Both the Act and the role of the Board requires affording deference to penalties calculated in accordance with presumptively valid regulations, and further, recognizes the deterrent purposes of the penalty citation system. Penalty relief should thus be granted only under restricted circumstances.

Dye & Wash Technology, Cal/OSHA App. 98-1640, Denial of Petition for Reconsideration (July 11, 2001) provides detailed factors which must exist prior to penalty elimination or reduction based upon financial hardship. Additionally, Employer must demonstrate it has a long history of providing safe employment and a dedicated commitment to employee safety and health.

The Bumper Shop, Inc., Cal/OSHA App. 98-3466, Decision After Reconsideration (Sep. 27, 2001). Any claim for financial hardship must be related, both in time and costs incurred, to correcting the violation because to allow otherwise would elevate an employer's financial hardship (which may be due to any number of economic influences and conditions) over the clear purposes of the Act.

Eagle Environmental Inc., Cal/OSHA App. 98-1640, Decision After Reconsideration (Oct. 19, 2001). Business closure alone will not justify penalty relief but may be considered along with a claim for relief based upon financial hardship. Employer has the burden of proof on all issues pertaining to its financial condition. If employers are allowed to evade their responsibilities by subjecting employees to unsafe working conditions and their penalty assessments for violating safety regulations are not enforced against them, employers would not only be shirking their responsibilities by not having an incentive to adhere to basic safety and health laws, but also, obtain an unfair (economic) advantage over their competition.

1. EMPLOYER WHO LEASES EMPLOYEES TO ANOTHER COMPANY IS SUBJECT TO OBLIGATIONS UNDER THE ACT.

Labor Ready, Inc., Cal/OSHA App. 99-3350, Decision After Reconsideration (May 11, 2002). Employee leased by Labor Ready to another company, Aaron Management Construction, was injured after falling from a ladder at a work site. Labor Ready was cited for failing to report the accident as required by 8 CCR 343(a). Neither the Labor Code nor the safety order make an exception for specific types of employers, e.g., "special employers," "primary employers," etc. Rather, the language unambiguously imposes the requirement on *all employers* whose employees suffer any serious injury, illness or death. All employers have a separate, independent, non-delegable duty to report employment-related serious injuries suffered by their employee as long as they learn or with diligent inquiry can learn of the injury or illness.

Manpower, Cal/OSHA App. 98-4158, Decision After Reconsideration (May 14, 2001). Manpower supplied a temporary employee to Paul Davis Construction. The employee was injured while loading heavy equipment on to a truck-trailer. Manpower was cited for failing to record any safety inspections of the site where the employee was sent as required by 8 CCR 3203(a)(4). Upfront participation of a primary employer (Manpower) is crucial to employee safety. Without adequate safety training by the primary employer, an employee begins work with little or no idea of the hazardous conditions or practices existing at the new workplace. If the primary employer fails to conduct an inspection of the secondary employer's worksite, it can provide no meaningful information to its employee regarding foreseeable hazards which result in a compromise of the effectiveness of its safety program.

2. ADEQUATE SUPERVISION OF EMPLOYEES IS IMPORTANT IN ESTABLISHING A DEFENSE TO SAFETY VIOLATIONS.

Preferred Framing, Inc., Cal/OSHA App. 003419, Decision After Reconsideration (Dec. 24, 2002). Employer was cited after employees at a residential development project (approximately 40 new houses) used a defective electrical cord and circular hand saw with its blade guard pinned back in violation of 8 CCR 2500.6 and 8 CCR 4307(c). Due to a shortage of carpenters in the 35-40 carpenter crew, the lone foreman at the site performed work normally done by a subordinate employee. Employer asserted the independent employee act defense (IEAD). The Board held that the defense was not applicable because the employer failed to establish it effectively enforces its safety program. Safety enforcement cannot be effective without enough supervision to maintain reasonable vigilance for unsafe conditions and practices for purposes of establishing the IEAD. Effective enforcement, under the circumstances, was not maintained with one foreman at the site.

Sunrise Window Cleaners, Cal/OSHA App. 00-3220, Decision after Reconsideration (Jan. 23, 2003). Employee was fatally injured when near the end of his shift he fell from a swing stage scaffold while cleaning windows on a 170-foot tall office building. During the last three runs, employee did not use the fall arrest system which required that he be tied to a lifeline. Employer had not visited the site that day and only randomly visited sites employees worked three or four times a week. Employer was cited for a serious violation of 8 CCR 3285 [fall protection on suspended scaffold]. The Board held that for Employer to defend against the classification of the violation as "serious," it must prove that it did



not, and could not with the exercise of reasonable diligence, know of the presence of the violation. (Labor Code § 6432(b)) Adequate supervision is an important consideration in determining whether an employer could have reasonably detected a violation. Employers cannot ignore workplace hazards and then claim lack of knowledge as a defense to a serious violation. Here, Employer failed to establish that it allowed for a reasonable opportunity to detect the employee's failure to use the lifelines, and further, the evidence presented regarding supervision did not amount to adequate supervision commensurate with the severity and proximity of the hazard for purposes of determining that the violation was not serious.

Airco Mechanical, Cal/OSHA App. 99-3140, Decision After Reconsideration (Apr. 25, 2002), a case of first impression before the Board on Employer liability at multi-employer work sites.

3. DOSH MUST ESTABLISH ALL ELEMENTS OF A VIOLATION BASED UPON COMPETENT EVIDENCE.

C.C. Meyers, Inc., Cal/OSHA App. 00-008, Decision After Reconsideration, (Apr. 13, 2001), a case where the Board held that the Division relied upon "an incomplete investigation and inadequate legal follow-up to prosecute the wrong employer." *C.C. Meyers, Inc.* was cited as the employer and the Board held that the evidence was insufficient to establish that fact. *C.C. Meyers, Inc.* contended that the true employer was Myers/Kulchin-Condor, a joint venture. The case was significant because it strongly reestablished that the Division has the burden of proof on all elements of a prosecution and that estoppel shall be applied under, only the most controlled circumstances.

Obayashi Corporation, Cal/OSHA App. 98-3674, Decision After Reconsideration, (June 5, 2001), a case where the Board reversed an ALJ decision against employer and found that insufficient evidence existed to find that an accident was by an unstable load as opposed to some other factor. The case is significant because it establishes that the Division must have a solid foundation for the evidence that it presents against employer and that the Board will question citations based upon an incomplete investigation or uncorroborated hearsay.

Sequel Contractors, Inc., Cal/OSHA App. 99-1055, Decision After Reconsideration, (Aug. 29, 2001). The Board reversed an ALJ decision against employer holding that no violation of Title 8, California Code of Regulations section 3328(b) existed when an employer followed manufacturer's recommendations and that the Division failed to establish a violation of section 3328(c) since it failed to prove that a photograph of a pneumatic hammer was the pneumatic hammer in question.



DEPARTMENT OF INDUSTRIAL RELATIONS

Workers' Compensation Appeals Board

P.O. Box 429459

San Francisco CA 94142-9459

(415) 703-4580



May 30, 2003

Senator John L. Burton, CHAIR
Senate Rules Committee
C/o Nettie Sabchlaus
State Capitol, Room 500
Sacramento, CA 95814-4900

Dear Senator:

Thank you for your letter of May 20, 2003, requesting that I submit a brief statement outlining my short and long term goals for the Workers' Compensation Appeals Board (WCAB) over the next six (6) years.

As you are aware, the WCAB is a seven member board exercising judicial powers vested in it by the Labor Code. (Lab. Code §111) The duties of a commissioner serving on the WCAB are outlined in Labor Code section 115.

A commissioner's primary mandate is to review the facts and law in each case coming before him or her and to render a fair and impartial decision based upon that review. I will endeavor to follow that mandate diligently and faithfully.

A commissioner does not serve in a capacity which would either set or implement policy as such.

I am honored to have been selected for this appointment and am grateful for the opportunity to serve.

Very truly yours,

A handwritten signature in cursive ink, appearing to read "A. John Shimmon".

A. JOHN SHIMMON, Commissioner
WORKERS' COMPENSATION APPEALS BOARD

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1 APPEARANCES

2 MEMBERS PRESENT

3 SENATOR JOHN BURTON, Chair

4 SENATOR BETTY KARNETTE

5 SENATOR WILLIAM KNIGHT

6 SENATOR GLORIA ROMERO

7 MEMBER ABSENT

8 SENATOR ROSS JOHNSON, Vice Chair

9 STAFF PRESENT

10 GREG SCHMIDT, Executive Officer

11 PAT WEBB, Committee Secretary

12 NETTIE SABELHAUS, Consultant on Governor's Appointments

13 SUSIE SWATT, Consultant to SENATOR JOHNSON

14 TIM SHELLEY, Consultant to SENATOR KARNETTE

15 CHRIS BURNS, Consultant to SENATOR KNIGHT

16 CARY RUDMAN, Consultant to SENATOR ROMERO

17 ALSO PRESENT

18 STEPHAN CASTELLANOS

19 State Architect

20 MARK CHRISTIAN

21 AIACC

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INDEX

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
STEPHAN CASTELLANOS State Architect	1
Opening Statement	1
Questions by CHAIRMAN BURTON re:	
Inventory of Seismically Unsafe Buildings	3
Report Finding High Levels of Formaldehyde in Portable Classrooms	4
Questions by SENATOR KARNETTE re:	
Rules on Outside or Enclosed Lunch Areas in Schools, etc.	6
Questions by SENATOR ROMERO re:	
Architectural Philosophy of Design and Aesthetics	7
Questions by CHAIRMAN BURTON re:	
Authority for Historic Preservation	9
<u>Witness in Support:</u>	
MARK CHRISTIAN American Institute of Architects California Council	11
Motion to Confirm	11
Committee Action	11
Termination of Proceedings	11
Certificate of Reporter	12
Addendum: Appointee's Statement of Goals	13



1 P-R-O-C-E-E-D-I-N-G-S
2

--ooOoo--

3 CHAIRMAN BURTON: Stephan Castellanos, State
4 Architect.

5 MR. CASTELLANOS: Good afternoon. I'm pleased to
6 be back before you again. It's been nearly four years since I
7 was here last, and a lot has happened in that time.

8 As you all are aware, I'm sure, the State
9 Architect is responsible for policy and regulation and the
10 oversight of California's public schools, big business now days.

11 We have checked nearly \$20 billion worth of plans
12 in the last -- in the time since I've been State Architect. And
13 this year looks like it's going to be a banner year for us. So,
14 you know, we're filling a tremendous and especially important
15 need in California, housing California school children in safe,
16 and supportive, and sustainable and accessible environments.

17 We've placed a great deal of effort in the last
18 few years in better defining the State Architect's role and the
19 important responsibilities that we have with regard to not only
20 public schools, but also public buildings, and that we've also
21 spent a great deal of time in doing what we can to develop
22 better relationships so that we can develop better service with
23 our key customers and stakeholders.

24 This has resulted in a number of -- for us and
25 for the Department of General Services very exciting initiatives
26 and efforts that have led to the construction of the most
27 sustainable, energy-efficient buildings the state has built to
28 date, buildings that actually partner with the community, and



1 buildings that better serve the end user and the organizations
2 that are housed in those buildings.

3 With regard to schools, in addition to reviewing
4 all the work that I just mentioned, including community
5 colleges, we've strived to develop better working relationships
6 with our partner agencies in government, the Office of Public
7 School Construction, the State Allocation Board, the California
8 Department of Education in particular in order to better
9 integrate and streamline our service, and to make it more
10 understandable and more accessible to school districts.

11 I'm proud to say that I believe we've reduced our
12 process time, and in fact have very productive working
13 relationships that are really about problem solving with the
14 largest school districts in the state. For that reason, I
15 think, it's making us capable in this year in particular of
16 making sure that the funds that the voters passed the bond for
17 last year will be put into use by the state school districts in
18 half or less the time than we've ever had in the past.

19 We have also strengthened our ability to better
20 participate in California's co-development process. It's been
21 important for us to continue to assure that California schools
22 are structurally seismically safe, but also continue to be
23 accessible. We've also continued to work very vigorously with
24 the highest priority on making sure that all buildings in the
25 State of California meet the needs of the disabled population
26 and provide the greatest degree of access that can be afforded
27 through our regulatory efforts.

28 With that, I'm very pleased once again to have

1 the opportunity for another term, and I would welcome any
2 questions.

3 CHAIRMAN BURTON: There was a law passed
4 requiring General Services to inventory the public schools, and
5 to see the ones that didn't meet the seismic safety stuff. The
6 upgrade of the most vulnerable buildings is 800 million or so.

7 What's happening on that as far as trying to get
8 that done?

9 MS. CASTELLANOS: The law that was passed asked
10 us to identify buildings and include them on an inventory. And
11 the stipulations -- or, to be placed on the inventory, the
12 buildings themselves had to be built prior to the adoption of
13 1976 Code, and also be of non-wood frame construction, or
14 unconventional construction.

15 The mere inclusion of the buildings on the
16 inventory doesn't necessarily mean that they're unsafe. But we
17 have, nonetheless, made the information available to school
18 districts throughout California. We work with them very
19 closely.

20 CHAIRMAN BURTON: What does it mean?

21 MS. CASTELLANOS: What does it mean? It means
22 that the building simply was built prior to 1976, and it's not
23 wood frame. Many of those buildings we know --

24 CHAIRMAN BURTON: It doesn't mean that it doesn't
25 meet seismic safety standards?

26 MS. CASTELLANOS: Not in every case. What we've
27 encouraged school districts to do is to employ structural
28 engineers to provide further analysis in those buildings that

1 are in their districts that fall into the inventory.

2 We have found in the meantime that a number of
3 school districts are really way ahead of us on this and have
4 already undertaken seismic review of a lot of their own
5 buildings. Nonetheless, we are working with those districts
6 that haven't. We've identified those structures for them.
7 We've made the list available on the Web.

8 And also with any request that comes in, we've
9 sat down with districts, and we're encouraging them to include
10 seismic upgrade with their bond proposals as they try to access
11 the state bond funding.

12 CHAIRMAN BURTON: How about the study on portable
13 classrooms that found the formaldehyde levels higher than the
14 guidelines for indoor exposure. What are you doing about that,
15 if anything?

16 MR. CASTELLANOS: We regulate portable buildings,
17 and we develop codes --

18 CHAIRMAN BURTON: I understand that. They found
19 out that there's a problem.

20 MR. CASTELLANOS: Right.

21 CHAIRMAN BURTON: What are you doing.

22 MR. CASTELLANOS: What we're doing is, we're
23 reviewing our code provisions right now, and we're determining
24 whether or not amendments need to be advanced to the Building
25 Standards Commission in order to correct the problem, and if so,
26 what kinds of amendments. We're working with Health Services
27 and others right now to try to determine the extent of the code
28 change that would be necessary in order to assure that the

1 environment inside of portable classrooms is --

2 CHAIRMAN BURTON: So that's the future ones. Do
3 you have any responsibility for the present ones?

4 MR. CASTELLANOS: We have no responsibility going
5 back, unfortunately.

6 CHAIRMAN BURTON: Who does? Somebody's got to.
7 What, the kids just end up getting poisoned?

8 MR. CASTELLANOS: I'll tell you who does is local
9 government and school districts themselves have a responsibility
10 to maintain, after our approval, to maintain safe and healthy
11 environments. And so, to the extent that we can work with local
12 school districts in order to encourage them to maintain and to
13 improve school districts --

14 CHAIRMAN BURTON: Well, the study showed that
15 they haven't maintained it. Now, does your department have a
16 responsibility to see that they do, or just like here's this
17 report, kids might get sick and die? Do you have a
18 responsibility?

19 MR. CASTELLANOS: As I said, Senator, going
20 forward we clearly have a responsibility. But going back, we
21 have very little authority to get --

22 CHAIRMAN BURTON: We're talking about going
23 forward from the time a report came out saying that there's high
24 levels of formaldehyde in these portable classrooms.

25 Do you have any responsibility, after you got
26 that report, going forward to the next day to either call the
27 school district, tell them you're doing something, not doing
28 something, encourage them to do something, or just forget about



1 it?

2 MR. CASTELLANOS: Absolutely, we have to --

3 CHAIRMAN BURTON: That was like either/or.

4 MR. CASTELLANOS: No. Well, we do have the
5 responsibility to contact and work with school districts, as I
6 said earlier, to make sure that they're aware of the
7 information, the grave nature of the findings in the report, and
8 to work with them to help them improve the conditions in those
9 classrooms.

10 As far as enforcement, we're responsible for
11 enforcement of building codes. There's very little we can do
12 going back, unfortunately.

13 CHAIRMAN BURTON: Senator Knight.

14 SENATOR KNIGHT: No questions.

15 CHAIRMAN BURTON: Senator Karnette.

16 SENATOR KARNETTE: I have a question that I'm not
17 sure that you're the person to answer it.

18 However, when schools are built, there are
19 certain rules about whether they have outside lunch areas,
20 inside lunch areas; whether they have enclosed halls.

21 I was talking to some people recently, and it's
22 really pretty difficult sometimes for children to eat outside,
23 and it's not just rain. It's pollution and other things.

24 What are the rules on that? Sometimes it gets
25 very hot, especially heat, but I'm thinking about kids being
26 forced to eat outside or eating in the classroom. That's their
27 option.

28 MR. CASTELLANOS: Well, unfortunately, you're



1 right. We're not the agency that sets standards for the design,
2 you know, of schools. The California Department of Education
3 sets, through their educational specification process, establish
4 the standards for size and location of classrooms, the
5 organization of the spaces on the site, dining, and all these
6 other activities that have to occur on a site.

7 What we do is, we develop and enforce the
8 Building Code. So, once the design is established, we review
9 for compliance with the safety requirements of California in
10 order to ensure safety for children in those classrooms.

11 I share your concerns, though.

12 SENATOR KARNETTE: If I wanted to do something,
13 who would I talk to, the Department of Education?

14 MR. CASTELLANOS: You would begin with the
15 Department of Education, yes.

16 SENATOR KARNETTE: Because also that includes
17 whether or not they have enclosed halls or not?

18 MR. CASTELLANOS: Right.

19 SENATOR KARNETTE: All of that.

20 MR. CASTELLANOS: Right.

21 CHAIRMAN BURTON: Senator Romero.

22 SENATOR ROMERO: Let me just ask a question here.

23 I represent portions of Los Angeles. When I
24 drive through downtown Los Angeles, oftentimes I see these old
25 historic buildings with some of the most beautiful designs and
26 signatures.

27 I'm just curious as to what your philosophy is.
28 Do you have sort of a signature that you'd like to leave behind



1 as having been the State Architect at some time in the future,
2 when a future generation is looking back and seeing what did
3 California build?

4 I mean, aside from all the budgeting and
5 pesticide issues, there's an aesthetic. And as an architect,
6 you can leave quite a legacy. I'm just curious, what's your
7 philosophy of a design?

8 MR. CASTELLANOS: That's a great question, and I
9 appreciate the question.

10 My philosophy personally is that good design is
11 all about the success of the user. I mean, if it's a student,
12 you know, the environment should encourage learning. If it's a
13 hospital, the environment should encourage healing.

14 So, through the effort -- through our efforts in
15 establishing the Excellence in Public Buildings Initiative,
16 we're trying to find ways of actually delivering buildings that
17 not only are beautiful and contribute to community, but also
18 perform better and are better values because everyone knows that
19 a building that performs as it should is the best value.

20 So, collecting a great deal of data, we're
21 putting what we're learning, because California is such a large
22 builder of schools and public buildings, back into our decision
23 making process so we can get things right maybe the second or
24 third time, rather than the eighth or ninth, or maybe never.

25 With regard to historic buildings, as you
26 mentioned, our office does administer the State Historic
27 Building Code. There has been a disjuncture for sometime
28 between historic schools and the Field Act. We've healed that



1 rift, and we've actually developed a program for historic
2 schools in California to retain that important historic fabric.
3 I think that it's important to our neighborhoods throughout our
4 communities in California.

5 We've also -- I'm very proud about our regulation
6 package we just had approved through the Building Standards
7 Commission that allows the re-use of existing buildings that
8 were approved at the local level that have never been schools:
9 abandoned buildings, historic buildings, shopping centers,
10 office buildings. And we've developed a path for those
11 buildings now to become legally complying schools in California,
12 giving, you know, another opportunity for school districts to
13 take advantage of some of the buildings of the type that you're
14 talking about that are currently under-utilized and may even be
15 a blight in some neighborhoods.

16 I'm proud to say we are working with LA, and
17 LAUSD on a number of those right now.

18 SENATOR ROMERO: Thank you.

19 CHAIRMAN BURTON: Who's got the authority, and I
20 don't know if the Senator was talking about the inside of
21 buildings or basically the outside, which drive in downtown LA,
22 there's nothing -- I mean, the great architecture and the
23 embellishment that was done, and the lattice work, you know,
24 when people did that stuff. I just think it's wonderful.

25 Then you see the junk they're building today that
26 you don't really want to look at.

27 Is that like local preservation has to do that,
28 or does the state?



1 MR. CASTELLANOS: We play an important role there
2 through the development of building standards that really can
3 encourage and provide some avenue to make these buildings safe
4 and assure their use.

5 CHAIRMAN BURTON: I'm not talking about safe.
6 I'm talking about, you know, aesthetics. I mean, in San
7 Francisco downtown, we've got a few. And you just look at an
8 old building, then you look at the new ones, and it's just like
9 I don't know what, like chicken salad and chicken something
10 else.

11 And down in LA, downtown LA, I mean, every time I
12 drive through there, whether these old hotels, these old office
13 buildings in the Jewelry Mart and that whole area, does the
14 state have anything to do with historic preservation, or does it
15 have to start at the local level and go up to you?

16 MR. CASTELLANOS: Both ways. As I said, you
17 know, we develop standards, but in addition the state and the
18 Department of General Services has a policy to try to house its
19 employees in downtown areas, in historic buildings, to the
20 degree as much as possible.

21 CHAIRMAN BURTON: I'm not being too articulate
22 here.

23 Do you have a role in preservation of historic
24 sites or buildings, or do you not?

25 MR. CASTELLANOS: No, only --

26 CHAIRMAN BURTON: It starts at the local level
27 and --

28 MR. CASTELLANOS: It starts at the local level



1 and goes up, yes.

2 CHAIRMAN BURTON: Okay.

3 Any witnesses in support? Witnesses in
4 opposition? In support.

5 MR. CHRISTIAN: Thank you, Mr. Chairman, Members
6 of the Committee.

7 Mark Christian with the American Institute of
8 Architects, the California Council, in support of the
9 confirmation of the Mr. Castellanos as State Architect.

10 CHAIRMAN BURTON: Thank you.

11 Call the roll.

12 SECRETARY WEBB: Senator Karnette.

13 SENATOR KARNETTE: Aye.

14 SECRETARY WEBB: Karnette Aye. Senator Knight.

15 SENATOR KNIGHT: Aye.

16 SECRETARY WEBB: Knight Aye. Senator Romero.

17 SENATOR ROMERO: Aye.

18 SECRETARY WEBB: Romero Aye. Senator Burton.

19 CHAIRMAN BURTON: Aye.

20 SECRETARY WEBB: Burton Aye. Four to zero.

21 CHAIRMAN BURTON: Congratulations.

22 MR. CASTELLANOS: Thank you very much.

23 [Thereupon this portion of the
24 Senate Rules Committee hearing
25 was terminated at approximately
26 1:49 P.M.]

27 --ooOoo--
28



1 CERTIFICATE OF SHORTHAND REPORTER
2

3 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Rules Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 ^{16th}
16 day of July, 2003.

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EVELYN J. MIZAK
Shorthand Reporter



Three Years ago, DSA set strategic performance goals in 6 key areas.

- Customer and Stakeholder Satisfaction
- Internal Systems and Processes
- High Performance Staff
- Expanded Access Program
- Excellence in Public Schools and State Buildings
- Legislation and Code Development

DSA is committed to improving stakeholder satisfaction by increased capacity and outreach.

Public Schools:

1. DSA has moved decisively to manage the work load of Proposition 47 by:
 - Increasing consultant capacity to avoid delays.
 - Increasing the frequency of Inspector testing and certification.
 - Mobilizing efforts to educate and motivate school districts to the opportunities of Proposition 47, and the school construction process generally, through training, meetings, presentations and publications.
2. DSA is enhancing its outreach and service to schools
 - By developing the process to do Energy reviews of plans to determine eligibility for additional funding under AB16.
 - By leading the way in sustainability outreach, with its Sustainable Schools web site and work with Collaborative for High Performance Schools (CHPS).
 - By proposing to the Building Standards Commission, and having accepted, emergency regulations that permit the use of existing structures for school use. Development of implementing procedures, documents and training, along with feasibility guidelines for stakeholders, is ongoing currently.
 - Greater use of partnering to continue the successes achieved with LA Unified and San Diego school districts.
 - With a new, more exhaustive outreach initiative, "Exploring Excellence" which will present the principles of the Excellence in Public Buildings Initiatives from a school district perspective. It is a Division goal to see this program succeed and help schools across the state to better manage their master planning of construction projects.



Stakeholder Involvement:

1. DSA Advisory Board - Recognizing that one cannot formulate policy in a vacuum, the board was created in September, 2001, to expand stakeholder representation and to make it more effective and responsive. As of March, 2002, it also serves as an appeals board for issues under DSA jurisdiction. The DSA Advisory Board is an invaluable source of insight on policy and administration, and, in its appeal capacity, provides an important alternative to litigation. The work of this Board must be encouraged and supported.

Partnering:

1. - Partnering with stakeholders is, and will continue to be a focus at DSA.
 - The Division is helping to form a new organization, the Super-Partnering Forum, which brings together private sector organizations in the design and construction professions and state agencies for the purpose of advising the state, resolving issues and promulgating best practices through member organizations.
2. - No less important is partnering with DSA's sister agencies in the School Construction process.
 - DSA, OPSC and California Department of Education (CDE) have collaborated on a common project tracking number system. This system is undergoing many enhancements.
 - DSA and OPSC collaborated on business process improvement and continue to work toward that goal and continue to develop streamlining initiatives including the possibility of a policy level committee between them.

DSA is very committed to the work of our Office of Universal Design

Through the Office of Universal Design (OUD), DSA:

1. Ensures compliance with state and federal access requirements, and
2. Seeks to define and explore Universal Design as it applies within DSA's area of responsibility.

As mandated by SB 1242, the OUD:

- Will, through policy and standards development, training and education, assist customers in their efforts to be compliant with state and federal law.

Statement of short and long term goals**July 1, 2003**

- Participates in the state's rulemaking process as a guide and advocate of Universal Design principles.
- Has posted on the DSA web site the 2003 California Access Compliance Reference Manual, FAQ's, Braille sign information and the current list of Access Plan Review Consultants.
- Conducts training for DSA staff, Real Estate Services Division (RESD) staff and planners, and inspectors.
- Is working with independent testing laboratories in order to present to the Building Standards Commission in summer, 2004, proposed regulations for the "Standard Test Method for the Evaluation of Detectable Warning and Directional Surfaces."
- Partnered with the State Fire Marshall to coordinate access/exiting issues and assure that regulations are compatible.
- Partnered with CalTrans to correct standard plans and right of way standards with regards to access compliance.

The work of this office is very important to the state and is fully supported at DSA and is well represented at the highest policy levels:

- a. Universal Design Subcommittee of the DSA Advisory Board,
- b. Excellence in Public Buildings Universal Design Charter Team.

The work of the OUD contributes greatly to the success of public buildings and public policy, guaranteeing access to all school and state public and essential services buildings to people of all ages and abilities. It is work that speaks to one of the highest of our guiding principles.

DSA continues to be committed to the development and implementation of innovations and technology that will result in fast, customer friendly operations.

Continuing Process Improvements:

1. Electronic submission and approval of plans.
- We are now completing a successful pilot program in which plans were electronically transmitted to DSA and reviewed.

- Additional benefits anticipated:
 - electronic fee payment and approval stamping
 - electronic filing and retrieval of plans
 - electronic comments on plans that can be harvested and form the basis of future training programs
 - automatic Office of Public School Construction (OPSC) notification
 - elimination of "back check" as a discrete step in the process.
- 2. Uniform Standards and Procedures Initiative (USPI) - now in its 2nd phase of implementation, is aimed at making DSA seamlessly consistent to its clients with regards to building code enforcement, and facilitate collaboration on research and technical issues.

DSA is proactive in developing policy and code that promote Excellence and Universal Design.

Policy

It is the role of the State Architect to develop policy regarding the design and construction of schools, public buildings and essential services buildings.

Many of the most important DSA policy initiatives of the last few years are coming to fruition now. My short and long term goals, going forward, flow from those recent achievements.

Excellence in Public Buildings Initiative:

- Sets centralized guidelines for the construction of schools and public buildings,
- Brings the concept of "evidence based architecture" to capital construction projects.
- Has already been applied to a few high flagship projects, such as the Capitol East End Project.
- At the core of evidence based architecture is the notion of learning from the experience, through Facility Performance Evaluation, and applying those lessons learned so as to enhance the success of future projects. An important long term goal is to formalize the procedures called for in EIPB and establish through "organizational learning" a real resource for future projects.
- In conjunction with Department of General Services (DGS), DSA is engaged in the implementation of EIPB, and the many other programs mandated under the EIPB umbrella (such

Statement of short and long term goals**July 1, 2003**

as Community Involvement, Universal Design, Art in Public Places, Historic Preservation, Sustainability, etc.). Translating policy into procedure is a major goal of the Division as we guide this process toward completion.

Code

DSA, as a member of the Building Standards Commission Code Coordinating Council has made a recommendation for a model code for California. The decision of the Commission will initiate a series of amendments and training development programs at DSA to enable it to interpret and enforce the new codes.



480-R

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25 Reported by:

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27 Evelyn J. Mizak
Shorthand Reporter

28



APPEARANCESMEMBERS PRESENT

SENATOR ROSS JOHNSON, Vice Chair

SENATOR BETTY KARNETTE

SENATOR WILLIAM KNIGHT

SENATOR GLORIA ROMERO

MEMBERS ABSENT

SENATOR JOHN BURTON, Chair

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR JOHNSON

TIM SHELLEY, Consultant to SENATOR KARNETTE

CHRIS BURNS, Consultant to SENATOR KNIGHT

CARY RUDMAN, Consultant to SENATOR ROMERO

ALSO PRESENT

ARTHUR CALDERON, Warden
California Correctional Institution, Tehachapi

ROSANNE CAMPBELL, Deputy Director
Health Care Services Division
Department of Corrections

DARLENE ESTES, Legislative Liaison
Association of Black Correctional Workers

SUZANNA AGUILERA-MARRERO, Association President
Chicano Correctional Workers Association

ROBERT KOELSCH, Vice President and Chief Steward
CSEA, SEIU 1000

1 MARIANA TEEL, Mayor
2 City of Tehachapi

3 MICHAEL LaPORTA, Chapter President
4 CCI Tehachapi
5 California Correctional Supervisors Organization

6 DAVE ARMENDARIZ
7 National Latino Peace Officers Association

8 MARC BAUTISTA, Deputy Director
9 Correctional Institutions Committee, CCI
10 CSEA, SEIU 1000

11 SCOTT RAWERS, Warden
12 California State Prison, Avenal

13 SID CRAIGHEAD, Mayor Pro Tem
14 City of Avenal

15 DARLENE STACEY, Chairperson
16 Avenal Citizens Advisory Committee

17 MELISSA WHITTEN, City Manager
18 City of Avenal

19 NICK MARTINEZ, President
20 District Labor Council 771
21 CSEA

22 ALLEN K. SCRIBNER, Warden
23 California State Prison, Corcoran

24 RAND HOYT
25 California Correctional Supervisors Organization

26 RICHARD TATUM, President
27 California Correctional Supervisors Organization

28 ALSON B. BRIZARD, Member
29 California Regional Water Quality Control Board
30 Central Valley Region

31 ROBERT H. SCHNEIDER, Member
32 California Regional Water Quality Control Board
33 Central Valley Region

1 BILL MAGAVERN
2 Sierra Club, California

3 GERALD D. COCHRAN, Member
4 California Regional Water Quality Control Board
5 North Coastal Region

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8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



INDEXPage

Proceedings 1

Governor's Appointees:

ARTHUR CALDERON, Warden
California Correctional Institution, Tehachapi 1

Background and Experience 1

Questions by SENATOR JOHNSON re:

Shortening of Processing Time for
Inmates 1

Difference in New Process 2

Giving Youths Outdoor Time 2

Effect of Health Care Costs on
Budget 3

Response by ROSANNE CAMPBELL, Deputy Director
Health Care Services Division
California Department of Corrections 4

Questions by SENATOR ROMERO re:

Assurance that Prison Conditions
Comply with State Law regarding
Youthful Offenders 5

Conditions of Incarceration for
Youthful Offenders 6

Questions by SENATOR KNIGHT re:

Maximum Time Allotted for Processing 7

Status of High Desert Hospital
Negotiations for Nursing Patients 7

Response by MS. CAMPBELL 7

1 Questions by SENATOR KARNETTE re:

2	Average Number of Youths Coming into 3 Prison	8
4	Activities of Youth While Awaiting 5 Processing	8
6	Changes in Vocational and Academic 7 Education Courses Due to Budget Cuts	10

7 Questions by SENATOR KNIGHT re:

8	Problems with Septic System	11
9	Request by SENATOR ROMERO to Hold Up Vote on 10 Appointee for Further Staff Investigation	12

11 Witnesses in Support:

12	DARLENE ESTES, Legislative Liaison 13 Association of Black Correctional Workers	13
14	SUZANNA AGUILERA-MARRERO, President 15 Chicano Correctional Workers Association	13
16	BOB KOELSCH, Vice President and Chief Steward 17 CCI, Tehachapi 18 CSEA District 707	14
19	MARIANA TEEL, Mayor 20 City of Tehachapi	15
21	MICHAEL LaPORTA, Chapter President 22 California Correctional Supervisors Organization	16
23	DAVE ARMENDARIZ 24 National Latino Peace Officers Association	17
25	MARC BAUTISTA 26 Correctional Institutions Committee	18
27	Retaliation for Speaking in 28 Opposition to Confirmation of 29 Warden Carey	19
30	Committee Decision to Put Nomination Over	21

1	SCOTT RAWERS, Warden California State Prison, Avenal	21
2	Background and Experience	21
3	Questions by SENATOR JOHNSON re:	
4	Inmate Population	22
5	Lockdowns	23
6	Questions by SENATOR ROMERO re:	
7	Response to Unfounded Allegations of Discrimination	24
8	Inappropriate Response to Senate Rules Committee Staff When Asked about Allegations of Disparate Treatment	26
9	During May 19 th Senate Staff Tour of Yard Six, Suggestion that Prison Staff May Have Been Involved in Earlier Riot	30
10	<u>Witnesses in Support:</u>	
11	DARLENE ESTES, Legislative Liaison Association of Black Correctional Workers	31
12	SUZANNA AGUILERA-MARRERO, President Chicano Correctional Workers Association	31
13	SIG CRAIGHEAD, Mayor Pro Tem City of Avenal	32
14	DARLENE STACEY, Chairperson Avenal Citizens Advisory Committee	33
15	MELISSA WHITTEN, City Manager City of Avenal	34
16	<u>Witness in Opposition:</u>	
17	NICK MARTINEZ, President District Labor Council 771 Correctional Institutions Committee	36

1	Motion to Confirm	37
2	Committee Action	38
3	ALLEN K. SCRIBNER, Warden	
4	California State Prison, Corcoran	38
5	Background and Experience	38
6	Questions by SENATOR JOHNSON re:	
7	Warden's Role in Keeping Health Care	
8	Costs Down	38
9	Lockdowns and Their Frequency	39
10	Questions by SENATOR ROMERO re:	
11	Classification Policies and Validation	
12	Procedures regarding SHU Unit	40
13	Behavior-based Validation Process	41
14	Average Cost to House Inmates in SHU	43
15	Questions by SENATOR KARNETTE re:	
16	Identifying Gang Members	43
17	<u>Witnesses in Support:</u>	
18	DARLENE ESTES, Legislative Liaison	
19	Association of Black Correctional Workers	44
20	SUZANNA AGUILERA-MARRERO, President	
21	Chicano Correctional Workers Association	44
22	RAND HOYT	
23	California Correctional Supervisors Organization	45
24	RICHARD TATUM, State President	
25	California Correctional Supervisors Organization	46
26	Motion to Confirm	47
27	Committee Action	47
28		

1	ALSON B. BRIZARD, Member	
2	California Regional Water Quality Control Board	
3	Central Valley Region	47
4	Background and Experience	48
5	Questions by SENATOR JOHNSON re:	
6	Controversy at Board Decision to	
7	Take Up a Matter without Prior Notice	48
8	Action Ill-Considered on Part of Board	49
9	Motion to Confirm	50
10	Committee Action	50
11	ROBERT H. SCHNEIDER, Member	
12	California Regional Water Quality Control Board	
13	Central Valley Region	51
14	Opening Statement	51
15	Questions by SENATOR JOHNSON re:	
16	Matter Better Dealt with at State Board	
17	Level or Local Level	51
18	<u>Witness in Support:</u>	
19	BILL MAGAVERN	
20	Sierra Club California	52
21	Motion to Confirm	53
22	Committee Action	54
23	GERALD D. COCHRAN, Member	
24	California Regional Water Quality Control Board	
25	North Coastal Region	54
26	Background and Experience	54
27	Questions by SENATOR JOHNSON re:	
28	Board's Role in Approval of	
	Timber Harvest Plans	55

1	Ability to Be Fair to Both Sides	56
2	Questions by SENATOR KARNETTE re:	
3	Ability of Scientific Review Panel to Help Resolve Issues	57
4	Any Need for Legislation	57
5	Motion to Confirm	58
6	Committee Action	59
7	Termination of Proceedings	59
8	Certificate of Reporter	60
9	APPENDIX: Appointees' Statements of Goals	
10	ARTHUR CALDERON	61
11	SCOTT RAWERS	62
12	ALLEN K. SCRIBNER	63
13	ALSON B. BRIZARD	64
14	ROBERT H. SCHNEIDER	66
15	GERALD D. COCHRAN	70
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

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--ooOoo--

4 CHAIRMAN JOHNSON: Governor's appointees
5 appearing today, Arthur Calderon, Warden, California
6 Correctional Institution, Tehachapi.

7 Good afternoon, sir.
8

9 MR. CALDERON: Good afternoon.
10

11 CHAIRMAN JOHNSON: If you would care to make a
12 brief opening statement.
13

14 MR. CALDERON: First of all, I wanted to give the
15 Senate Rules Committee my appreciation for allowing me to be
16 here this afternoon. I especially wanted to thank my staff
17 principally, Brian Perriot and Brian Haus, and my wife Yolanda.
18

19 And just to tell you that I've been in the
20 business for 37 years. I started as a correctional officer in
21 1966, worked in a variety of positions and classifications
22 throughout the state to my present assignment as Warden of
23 California Correctional Institution.
24

25 So, I'm available to take any questions you might
26 have of me.
27

28 CHAIRMAN JOHNSON: In written responses to the
Committee, you told us that you're trying to shorten the
processing time to about five to seven weeks. Are you doing
that?
29

30 MR. CALDERON: Yes, Senator, we are.
31

32 You're referring to the YOP process? Yes, sir.
33

34 CHAIRMAN JOHNSON: So you're now doing that in
35 the five to seven weeks as of what date?
36

1 MR. CALDERON: As of approximately the 30th of
2 May. There were some glitches. We did have some problems. I
3 got personally involved. I talked to the inmates, even the
4 family members, and we were having some problems. But I think
5 you'll see since about the 30th of May, you'll see a definite
6 reduction in the amount of processing time to an average of
7 about 36 days, versus as many as 100 days back in 2001.

8 CHAIRMAN JOHNSON: Why did it take so long
9 before? How is the new process different?

10 MR. CALDERON: Well, the new process is different
11 primarily because I've emphasized the importance and how
12 critical it is to get these cases processed on time.

13 Also, myself and my staff, primarily the
14 administrators are getting a hands-on and actually going and
15 making sure that it's working because, as you know, sometimes
16 when you don't get actively involved, things can go sideways in
17 a moment's notice.

18 So, I think it's just impressing upon them the
19 importance of getting these cases processed.

20 CHAIRMAN JOHNSON: And if you're confirmed, do
21 you believe you're going to be able to continue to do that?

22 MR. CALDERON: Yes, sir, I do. Being actively
23 involved, yes.

24 CHAIRMAN JOHNSON: You also indicated that as of
25 May 30th, giving the youths in the process of being processed
26 five to eight hours a week in the dayroom and outdoors.

27 Are they all getting that now?

28 MR. CALDERON: We initially had some problems

1 when we initiated the program, and we had to kind of fine-tune
2 it, but I'm convinced now that we are -- they're going at least
3 five -- before, we were not getting any -- any yard time with
4 these cases. Now we're getting at least five hours of yard
5 time.

6 And to answer your question, yes, Senator, it is
7 happening. I was out over the weekend making sure that it was
8 happening, and it is happening.

9 CHAIRMAN JOHNSON: Why did it take so long to
10 achieve that?

11 MR. CALDERON: I don't think we recognized the
12 importance and got actively involved like we should have done.
13 Sometimes it takes awhile with staff, and you just have to
14 monitor. You have to have monitoring of the program to ensure
15 that it's happening. And then, like sometimes unfortunately
16 happens when you don't get personally involved, things don't
17 happen as you wish they would have.

18 And so, I can assure you that I am personally
19 involved in the process, sir.

20 CHAIRMAN JOHNSON: What's the effect, shifting
21 gears, what's the effect on the people who really ought to be in
22 skilled nursing facilities, what's the impact of that on your
23 budget? How does that effect the health care costs overall, the
24 fact that you have people in the institution there who maybe
25 should be in a skilled nursing facility?

26 MR. CALDERON: Well, no question that the cost
27 rises significantly. As to the actual amounts, I'm not sure.
28 However, I can get that information for you.

1 MS. CAMPBELL: Senator, excuse me. I'm Rosanne
2 Campbell. I'm the Deputy Director of Health Care Services
3 Division for the Department.

4 The boarders, as I think we've been calling them,
5 or the long-term care inmates that are at his facility, I
6 believe you have about four or five right now, they are
7 adequately -- they are placed adequately there with their level
8 of care. They have an outpatient housing unit.

9 But I need to let you know that we are seriously
10 looking and received proposals to contract with SNFs, skilled
11 nursing facilities, in the community, because we do have a real
12 shortage in in-house beds.

13 Mr. Calderon has, like I said, an outpatient
14 housing unit, but basically it's sheltered living, and the
15 inmates that are there are receiving the appropriate level of
16 care.

17 The concern we have with the Department of
18 Corrections is the lack of overall beds. We do have not only
19 for this facility, but for even the chief facilities we're going
20 to speak with also have inmates in that level in their care that
21 are really -- I would say are -- they are providing a higher
22 level of care than they really need to, especially at Corcoran.

23 So, we are looking at a long-term care facility,
24 and contracting out with a facility in order to adequately place
25 those cases.

26 The OHOs are probably our cheapest beds right now
27 as it relates to providing medical care, obviously our hospitals
28 and our other licensed facilities. His facility is not

1 licensed, and it basically is just providing sheltered living.
2 When there is a need for higher level nursing, we move them to a
3 licensed facility within our prisons.

4 CHAIRMAN JOHNSON: Thank you.

5 Senator Romero.

6 SENATOR ROMERO: Thank you.

7 Let me ask, I'm very interested in the housing of
8 the youthful offenders. Can you give us a little bit more
9 detail as to what steps you are taking to ensure that youthful
10 offenders that you have there at the prison, the conditions
11 comply with state law?

12 MR. CALDERON: Well, I think probably one of the
13 most important things, whether it's myself or any other warden,
14 has to have a hands-on policy. You need to get actively
15 involved. You need to be talking to not only the youth that are
16 involved in the program, but the staff and the families as
17 well.

18 I think when you do that, number one, you
19 demonstrate your interest. You demonstrate that you're
20 sensitive to those kinds of issues and that you are trying to do
21 everything within available resources that you possibly can to
22 try to ensure that they're treated in a humane, safe manner.

23 As an example of that, over the weekend I was in
24 the Visiting Room talking to some of the parents of the youth as
25 well as the youth themselves to try to determine were there any
26 outstanding problems, were there any issues.

27 So, the long and the short of it is, is to get, I
28 think, a personal involvement from the warden is critical.

1 SENATOR ROMERO: Can you give us a little bit
2 more detail than just the general reassurance, the personal
3 involvement, talking to family.

4 I applaud that. I think that's good.

5 But more specifically in terms of the lockup
6 conditions, what time out of the cell do they have? What about
7 access to any educational opportunities? Can you give me a
8 little bit more substance with respect to the conditions of the
9 incarceration of youthful offenders?

10 MR. CALDERON: Well, number one, the wards that
11 have already -- I'm not talking about the processing cases --
12 of people that have already been processed have education. They
13 have yard time. They do have time in the gymnasium.

14 SENATOR ROMERO: How many hours a week?

15 MR. CALDERON: For the processing cases, five
16 hours, five hours a week in the yard. A total of eight hours,
17 including the Day Room and shower, eight hours a week for the
18 processing cases.

19 For the other cases, they're out, the ones that
20 have already processed, they're out everyday either in education
21 or in the gymnasium.

22 SENATOR ROMERO: Total time? You can separate
23 it: total time education; total time out in the yard? An hour?

24 MR. CALDERON: No, approximately three hours at
25 education, and approximately two hours in the gymnasium.

26 SENATOR ROMERO: All right, thank you.

27 CHAIRMAN JOHNSON: Senator Knight.

28 SENATOR KNIGHT: Thank you, Mr. Chairman.

1 Is there a maximum time that you have established
2 for processing?

3 MR. CALDERON: A maximum time?

4 MR. CALDERON: Yes, you know, they will be
5 processed in 48 days or whatever?

6 MR. CALDERON: No, Senator. My whole -- I want
7 to get them processed the earliest possible. Can we do better?
8 Yes. Once you're hitting 30 days or 35 days, I think you're
9 going way over. So, I think we're doing excellent at this
10 point.

11 My intent is to try to reduce it even more than
12 I'm doing now.

13 SENATOR KNIGHT: So, you don't have a maximum
14 time?

15 MR. CALDERON: No, Senator.

16 SENATOR KNIGHT: Secondly, your nursing patients
17 that you send out, what is the status of the High Desert
18 Hospital negotiations? Is that completed, or is there any
19 possibility for continued effort?

20 MR. CALDERON: The High Desert, the only
21 negotiations --

22 MS. CAMPBELL: Let me help you out there.

23 Rosanne Campbell.

24 CHAIRMAN JOHNSON: I feel like we ought to have a
25 bugle call here.

26 MS. CAMPBELL: It's because the wardens aren't
27 actually doing all the negotiations.

28 The latest as it relates to the High Desert

1 contract, and that was for long-term care I understand, we have
2 received their proposal. At this point we have not accepted
3 their proposal, and it is based on the cost of the proposal.

4 SENATOR KNIGHT: It's what?

5 MS. CAMPBELL: It's based on the cost of proposal
6 at this point.

7 We do have two other facilities that are, in
8 fact, bidding also for that, the skilled nursing facilities.
9 So, we have others that are definitely interested as well.

10 SENATOR KNIGHT: But the ones for the High Desert
11 Hospital, that's not competed yet? Is that still open?

12 MS. CAMPBELL: At this point in time it is not --
13 well, I don't want to say it's not completed. The last proposal
14 was not accepted.

15 SENATOR KNIGHT: Thank you.

16 CHAIRMAN JOHNSON: Senator Karnette.

17 SENATOR KARNETTE: I have some questions related
18 to how many youths you have coming in at one time. Is there an
19 average number? How many people are we talking about?

20 MR. CALDERON: I don't know if we have an average
21 number. The total that we have as of this morning was 140.

22 SENATOR KARNETTE: That's a pretty big group.

23 While they're being processed, what are they
24 allowed to do? What are they doing? Are they sitting on a
25 bench waiting, or what?

26 MR. CALDERON: Well, it depends on what stage of
27 the process they're in. They get medical examinations. They
28 get psychologically cleared. They have testing, educational

1 testing.

2 SENATOR KARNETTE: But the thing is, they're
3 people like the people sitting right here. And all these people
4 are just sitting, and they're listening.

5 What are they doing while they're waiting? Are
6 they sitting like this? Are they out in the gym playing
7 basketball? Are they chained to their chairs? What?

8 MR. CALDERON: Again, depending on what group
9 that you're talking about, if you're talking back to the issue
10 of the processing, we send them out to the yard a total of five
11 hours a week, five hours a week.

12 SENATOR KARNETTE: But that's only one hour a
13 day.

14 MR. CALDERON: Yes. In addition to that, we do
15 have the Day Room, add another three hours to that, eight hours.
16 The rest of the time, again, they're going through medical,
17 educational testing, psychological --

18 SENATOR KARNETTE: I understand. I got that.

19 But there's some dead time in there. Do they
20 have books to read? Do they write letters? Do they play chess?
21 Do they play checkers? Throw rocks at each other?

22 MR. CALDERON: Yes, Senator, they do have access
23 to reading materials. They do -- they do have the ability to
24 write home if they care to do that.

25 Off the top of my head, those are the things that
26 I can think of.

27 SENATOR KARNETTE: When they come in, are they
28 brought into a room, a given room, or taken from one building to

1 another, escorted?

2 I'm trying to get a picture of how you do this.

3 MR. CALDERON: Yes, that's correct. Depending on
4 where they're going to go, where ever the medical staff is
5 situated to conduct these interviews, they are escorted to those
6 areas to take care of those needs.

7 SENATOR KARNETTE: I'm really concerned about
8 young people. And I think when the young ones get in this kind
9 of a situation, if there's any hope at all, we've got to grab
10 them then and help them, because as they get older, it gets more
11 and more difficult. I really am concerned about that.

12 I'm also concerned about their education. I want
13 to know what kind of changes have you had to make because of the
14 budget cuts in academic and vocational?

15 MR. CALDERON: In respect to YOP, we have not had
16 to make any changes in respect to YOP educational things that
17 are available for them at this point.

18 SENATOR KARNETTE: These are people that are
19 tried as adults, but they're really young people; aren't they?

20 MR. CALDERON: Yes.

21 SENATOR KARNETTE: But they're tried as adults?

22 MR. CALDERON: Yes. And at the time -- as soon
23 as they hit 18 years of age, then they're transferred out of
24 that unit into the adult part of the prison.

25 SENATOR KARNETTE: And what happens to them then
26 as far as education goes, vocational training and so forth?
27 Have you made cuts in that for the adults?

28 MR. CALDERON: For the --

1 SENATOR KARNETTE: Because of budget cuts, have
2 you found it necessary to decrease the amount of vocational
3 training for those who are adults?

4 MR. CALDERON: For adults, at this point we have
5 not made any significant -- it hasn't had a significant impact.
6 However, there are plans afoot, as an example the vocational
7 program. We're going to be reducing five classes, five
8 vocational classes, but we have not done so as of today.

9 SENATOR KARNETTE: Okay.

10 CHAIRMAN JOHNSON: Senator Knight, do you have an
11 additional question?

12 SENATOR KNIGHT: Yes, just one.

13 As I remember, Tehachapi had a problem with the
14 septic system up there, and it was backing up into the
15 buildings, et cetera.

16 Have you still got a problem with it?

17 MR. CALDERON: Fortunately, Senator, that has not
18 been a major problem since I've been there.

19 We do -- we are in the process of going through
20 the budget process to repair some of those kinds of problems and
21 to take us off those spray fields that we have in the back of
22 the institution. We have received all the permits that are
23 required, so we're in the process.

24 But in terms of significant sewage backup, we
25 have not seen much of that. We have seen some of that, but not,
26 as I'm told, used to happen before.

27 SENATOR KNIGHT: But you have an approved and
28 funded project to correct that situation?

1 MR. CALDERON: That's correct, Senator.

2 SENATOR KNIGHT: Thank you.

3 CHAIRMAN JOHNSON: Senator Romero.

4 SENATOR ROMERO: Senator Johnson, I'm going to
5 say as well that I'm actually going to request that this
6 confirmation be put over to allow the Senate Rules Committee and
7 Senate staff to do some additional work on this area.

8 I know Senator Burton has some concerns about the
9 conditions at Tehachapi; I know I do as well specifically with
10 regard to the SHU, but also with respect to the incarceration of
11 youthful offenders.

12 It's my understanding that when staff did go to
13 visit Tehachapi, I believe it was May 21st, May 28th, late in
14 May, and I understand of course, too, you're relatively new, but
15 the questions were posed to you with respect to the delay in
16 processing of incarcerated youth. It had been uncovered that
17 sometimes youth as young as 15 years old could wait up to three
18 months in order to have health conditions met, or educational
19 facilities met. Yard space is not readily available, but often
20 times when the yards were occupied, youth were, of course, not
21 allowed to go into those yards.

22 That was uncovered; that was acknowledged in late
23 May. It's now late June. A month is a very short amount of
24 time. I'm hopeful that there will be programs in place to try
25 to expedite the processing. I'm hearing that you are saying
26 that, but I really do think that it's a little bit premature for
27 us to be having the confirmation hearing today.

28 I would ask that this matter be put over so we

1 can do some additional work and get additional input.

2 CHAIRMAN JOHNSON: And to give a little longer
3 than just a month to see if the new processes and procedures
4 produce the result.

5 I suppose the question is, should we go ahead at
6 this point and hear from the witnesses for and against, but with
7 the understanding that this matter is not going to be voted on
8 today? I really will defer to the will of the --

9 SENATOR ROMERO: I think it's fine to go ahead
10 and hear from them. There are probably some folks who have
11 traveled and who may not be able to return. I would be open to
12 hearing from them.

13 CHAIRMAN JOHNSON: All right, that's what we'll
14 do, then.

15 Witnesses in support, please.

16 MS. ESTES: Hello. My name is Darlene Estes. I
17 am the Legislative Liaison for the Association Black
18 Correctional Workers.

19 I am representing Mr. Roy Mabry and the
20 Association of Black Correctional Workers, and we are in support
21 of Mr. Calderon's appointment or confirmation to Warden. And
22 we're looking forward to a continued working relationship with
23 him.

24 CHAIRMAN JOHNSON: Thank you very much.

25 Next witness in support.

26 MS. AGUILERA-MARRERO: Good afternoon. It's an
27 honor and a privilege again to come before such a prestigious
28 committee.

1 My name is Suzanna Aguilera-Marrero, and I'm the
2 Association President for the Chicano Correctional Workers
3 Association.

4 In the letter that we previously submitted on
5 behalf of Mr. Calderon, on behalf of the 2500-plus members of
6 the Chicano Correctional Workers Association, we're thrilled and
7 excited to support Mr. Arthur Calderon in his appointment by the
8 Governor to Warden at California Correctional Institute,
9 Tehachapi.

10 He is what books are made of insofar as the
11 institutions are concerned. He has been in the Department in
12 excess of 34 years or 35 years. He has been involved in the
13 evolution of Corrections.

14 I think that we need to recognize that he has the
15 knowledge that he has gained as a result of his experience that
16 you can't learn in any academic institution. That he has been
17 instrumental in not only developing what has transpired into
18 current policy and procedure, but in what we're hoping to evolve
19 into making even better policies and procedures.

20 He is prudent. He's fair. He's mindful in his
21 decision-making. And it is the respect and integrity and his
22 professionalism that we can continue to expect from him.

23 We respectfully request that you support his
24 appointment to Warden.

25 Thank you.

26 CHAIRMAN JOHNSON: Thank you very much.

27 Next witness in support, please.

28 MR. KOELSCH: Senate Rules Committee, my name is

1 Bob Koelsch, and I'm Vice President and Chief Steward at CCI
2 Tehachapi, and also a vocational instructor where I represent
3 CSEA Membership in District 707.

4 I'm here today in favor of supporting Warden
5 Calderon's appointment. Mr. Calderon has made a commitment to
6 our membership to honor the language of the contract, help
7 resolve critical issues, and hold regular scheduled
8 labor-management meetings and health and safety meetings in an
9 effort to keep ongoing communication with union leadership.

10 He has also shown sensitivity to our members in
11 the recent notices of potential layoffs and is committed to
12 interacting with the union to help lessen the impact if at all
13 possible.

14 We are secure in believing that Mr. Calderon's
15 commitment to respect to the language of the contract as his
16 appointment as Warden will be a successful one. Therefore, on
17 behalf of CSEA's Civil Service Division membership at CCI, and
18 as an officer and elected leadership in this district, I would
19 like to go on record as supporting the confirmation.

20 CHAIRMAN JOHNSON: Thank you, sir.

21 Next witness, please.

22 MS. TEEL: Good afternoon. I'm Mariana Teel.
23 I'm the Mayor of the City of Tehachapi, and it is really an
24 honor to be here in front of you, thank you very much.

25 On behalf of the City and the City Council, we
26 are here to endorse Mr. Calderon as appointee for Warden of CCI.

27 From the first time I met Mr. Calderon, he has
28 had a great sense of community. He participates in many of our

1 activities, and I asked him -- or I spanked him one day for
2 attending. And he said, "Mariana, I am part of the community."

3 First of all, he does live in our community,
4 which I think is a great asset. He makes sure there's someone
5 on our Emergency Preparedness Committee. He attends City
6 Council meetings. He is active in participating in public
7 speaking. He had a lighting ceremony where he invited the
8 community and his employees during Christmas, which I thought
9 was a great gesture, and he also attended our 9-11 ceremony
10 where he is an eloquent speaker, and a veteran, and very proud
11 to have represented his country.

12 From the a city perspective and a public
13 administrative perspective, Mr. Calderon has been a great
14 liaison.

15 Thank you.

16 CHAIRMAN JOHNSON: Thank you.

17 Next witness, please.

18 MR. LAPORTA: Hello there. My name is Michael
19 LaPorta. I'm a correctional lieutenant at CCI. I'm also the
20 local Chapter President for the California Correctional
21 Supervisors Organization.

22 We have a good rapport with Mr. Calderon. He
23 meets with us regular. He's a fair man. He's ethical. He's
24 put a lot of programs into place that affect the supervisors and
25 they make for better working conditions.

26 And we are here to ask that -- we support him in
27 his bid for confirmation as the Warden.

28 CHAIRMAN JOHNSON: Thank you very much, sir.

1 Next witnesses, if you could be wending your way
2 forward.

3 MR. ARMENDARIZ: Mr. Chairman, Members of Senate
4 Rules, my name is Dave Armendariz. I'm here to represent the
5 30-plus chapters in California and some 40 statewide chapters of
6 the National Latino Peace Officers Association.

7 I want to thank you very much for allowing me the
8 opportunity to appear before you on behalf of Mr. Calderon.

9 Mr. Calderon's 37 years of experience in the
10 field of corrections speaks for itself in terms of not only
11 working the line, but also up the ranks in management,
12 supervision through management, in just about every aspect of
13 the Department of Corrections function.

14 As you well know, he served very successfully as
15 the Warden of San Quentin not too long ago, and he's appeared
16 probably I think the third time before Senate Rules Committee
17 for another confirmation this time.

18 We wholeheartedly support Mr. Calderon. We have
19 had a working relationship, a tremendous professional
20 relationship with Mr. Calderon over the years of our
21 organization. I might add that he was one of the founding
22 fathers of our organization, which again now transcends
23 throughout the nation. We represent correctional people as well
24 as the line, local, state, and federal agents, and he has been
25 very, very supportive of our organization in terms of providing
26 leadership, training, and his expertise in the area of
27 corrections, including guiding information, classification
28 issues.

1 I'm sure that as he takes over the -- continues
2 to take over the helm at CCI, the issues that were raised today
3 will be gone away in the time that you apparently are going to
4 be allotting him, because he has the skill, he has the ability,
5 and he has the rapport to work with staff to make those things
6 happen.

7 I want to thank you very much.

8 CHAIRMAN JOHNSON: Thank you, sir.

9 Next witness, please.

10 MR. BAUTISTA: Good afternoon. My name is Marc
11 Bautista. I am the Deputy Director, I'm the officer assigned to
12 the Correctional Institutions Committee. This committee, one
13 of the main roles is actually to educate our members and our
14 stewards who work for the Department of Corrections.

15 Another role of this committee is to attend these
16 wardens' confirmations and put forward our union's position.

17 As of today, you heard Bob Koelsch, the Chief
18 Steward for Mr. Calderon, who works with Marty Goodman, who is
19 actually also a committee member but had another commitment
20 today. In the vast majority of the cases, we support these
21 wardens, but today I have to ask -- I'm coming here on behalf of
22 my committee, and very difficult for me to deliver this message,
23 but I need to deliver this message.

24 CHAIRMAN JOHNSON: Sir, you're testifying --

25 MR. BAUTISTA: In support, I'm in support of
26 this, but you need to -- it's very difficult to get in touch
27 with committee members at different times.

28 This Committee a little over a year ago toured

1 Solano State Prison in preparation for the confirmation of
2 Warden Carey. This will take just a few minutes. Please bear
3 with me.

4 During that tour, our union presented a binder
5 explaining why our union was in opposition to Warden Carey's
6 confirmation. During the confirmation of Warden Carey, Joyce
7 Thomas-Villaronga spoke in opposition to the confirmation of
8 this warden.

9 Our union later found out from this Committee
10 that Warden Carey, in a meeting with CDC managers, had made the
11 following statement:

12 "Don't worry about her. I'm
13 going to get her. I've been
14 staying up late thinking how I'm
15 going to respond to that binder.
16 There are ways of getting her
17 that I can pursue once I am
18 confirmed. Don't worry, Larry,
19 there's a side of me that she
20 will see that no one has seen.
21 Don't let this get out."

22 It should be noted that just a few weeks before
23 the binder was given over, Joyce Thomas-Villaronga had received
24 her annual performance report, which was overall outstanding.
25 During the past 12 months, Joyce has received three letters of
26 instructions and been under investigation several times, and
27 presently serving a 60-day suspension without pay.

28 CHAIRMAN JOHNSON: Sir, could we get to the

1 qualifications or lack thereof of this nominee?

2 MR. BAUTISTA: I understand.

3 Senate Committee Members, the first confirmation
4 I ever attended was for Thomas Alvarado for Barstow Veterans
5 Home. During that hearing, Senator Burton promised those who
6 would come and spoke in opposition to the confirmation that they
7 would suffer no retaliation. And he promised that if they did,
8 to come back and see him.

9 Today on behalf of my committee, which consists
10 of seven CDC employees, three of which are serving Adverse
11 Actions and two who have suffered -- been the subject of
12 retaliation and harassment, I call in that promise from this
13 Committee to come and see if there's retaliation.

14 Committee Members, let me assure you this, in
15 some institutions retaliation is alive and well behind the walls
16 of CDC.

17 Thank you.

18 CHAIRMAN JOHNSON: Sir, I just feel compelled to
19 ask, are you alleging that this nominee --

20 MR. BAUTISTA: No, absolutely not. We are in
21 support of this.

22 CHAIRMAN JOHNSON: Then I'm having a little
23 trouble understanding the relevance of your testimony, but I
24 thank you for it anyway.

25 MR. BAUTISTA: I just wanted to have this on the
26 record.

27 CHAIRMAN JOHNSON: Any further witnesses in
28 support.

1 Witnesses in opposition?

2 All right. As indicated earlier, sir, I think
3 we're going to put this nomination over. I apologize for any
4 inconvenience, and we'll reschedule at a later time. Thank you
5 very much.

6 MR. CALDERON: Thank you for your time.

7 CHAIRMAN JOHNSON: Scott Rawers, Warden,
8 California State Prison at Avenal.

9 If you'd care to make a brief opening statement.

10 MR. RAWERS: Thank you very much.

11 I'd like to thank the Committee for allowing me
12 to be here today to present my credentials as the Warden of
13 Avenal State Prison. And I would like to give a brief history
14 of my career in the California Department of Corrections.

15 I worked for over 30 years in this department,
16 in 13 different locations. I started my career as a
17 correctional officer and rose through custody, counseling, and
18 managerial ranks to my current appointment as Warden, which I
19 assumed on August the 7th, 2002. I have worked in, supervised,
20 and/or managed dormitory housing facilities for over 23 of my 30
21 years in this department. This experience serves me well in
22 overseeing the operations of Avenal State Prison, the largest
23 all-dormitory housing prison in the California system.

24 Thank you, and at this time I'd address any
25 questions the Committee may have about my credentials or the
26 facility.

27 I would like to take the opportunity to
28 acknowledge my wife, Diana Gail Rawers, who's here to support me

1 today.

2 CHAIRMAN JOHNSON: Thank you, sir.

3 In 1995, apparently the inmate population was
4 5500. Now it's over 6800; is that correct?

5 MR. RAWERS: That is correct.

6 CHAIRMAN JOHNSON: At what point does it become
7 no longer safe to increase that inmate population?

8 MR. RAWERS: Senator, I'm not sure that you can
9 identify an exact point at which a prison becomes over populated
10 to the point it becomes unsafe. As long as you --

11 CHAIRMAN JOHNSON: Mrs. Johnson and I were able
12 to identify that three kids would be too many.

13 [Laughter.]

14 MR. RAWERS: Of course, it certainly gets
15 crowded.

16 But one of the things that has happened as the
17 prison has grown in its structure, it has added staff, it has
18 added security, software and hardware there to increase the
19 security of the inmates and the staff and the public.

20 There does come a point in which you just can't
21 add anything more into the pot. I would say at this point,
22 we're not quite there yet because we have managed to keep last
23 year 7,110 with very few problems.

24 But I would concur with you, we are getting
25 close.

26 CHAIRMAN JOHNSON: I understand you've had a
27 couple of lockdowns recently, one maybe this week.

28 MR. RAWERS: Yes.

1 CHAIRMAN JOHNSON: What triggers a lockdown of
2 that sort, and then, I guess, how do you go about unlocking it
3 after you've locked it down?

4 MR. RAWERS: Lockdowns in a dormitory setting are
5 rather unique in themselves. Just about anything can trigger a
6 riot or a fight requiring a lockdown inside a dormitory area.

7 We do not have cells. People are face-to-face
8 with each other, sometimes 300 to a building for long periods of
9 time and with very few distractions: two tv sets, a few games,
10 a time and place to write letters, but not a lot for these
11 people to not get into each other's face, if I could use that
12 term.

13 So, it's not uncommon in those conditions for
14 tempers to flare, for people to start fighting. And once you
15 start fights in a large dormitory setting, there's usually a
16 reaction of other inmates, and quite often the other inmates get
17 involved. Then we end up with a lockdown, or at least a
18 modified condition in either the area or the building in which
19 it occurred.

20 In Avenal, once we've contained the riot or the
21 violence, and initially, in order to contain, we put all inmates
22 down on their bunks, secure the area, get sufficient staff in
23 there to identify people who have been involved in this fight,
24 either through marks, or staff observation, or information that
25 comes in from inmates or others, and we remove them from the
area. The remaining inmates we put back inside their buildings.

27 We go through locker searches, interviews with
28 inmates, try to determine if we can what caused the disruption.

1 If not, what were the events that led up to it so maybe we can
2 put some kind of a connection as to how we got there.

3 CHAIRMAN JOHNSON: Who does that?

4 MR. RAWERS: The staff themselves, the
5 correctional officers, my Investigative Services Unit staff,
6 counselors who are assigned to those facilities or are brought
7 over from other facilities. It's the Avenal State Prison staff
8 themselves that do that.

9 CHAIRMAN JOHNSON: And you have do have an
10 Investigations Unit?

11 MR. RAWERS: I have a very small unit composed of
12 a lieutenant and two sergeants who, for 7,000 inmates, are
13 responsible to oversee the investigations in there, yes.

14 CHAIRMAN JOHNSON: Senator Romero.

15 SENATOR ROMERO: Thank you.

16 We have been contacted by former employees who
17 have indicated that they believe, they've made allegations, that
18 you have acted in a discriminatory manner toward them.

19 This was subsequently referred to the Inspector
20 General, who did take a look at it and found that the
21 allegations were unfounded.

22 I'd like to ask you, though, if you can respond
23 to the allegations, and why you believe that these were made?

24 MR. RAWERS: Yes, Senator.

25 I think the crux of the issue is my personality
26 and how it's evolved over the years. Initially, as I came up
27 through the ranks, most of the assignments I had, most of the
28 jobs that I had were project oriented, and it was spearheading

1 something, and recruiting people, and getting it done, with
2 tight timeframes, and more -- or less people-oriented jobs, I
3 guess is the way I can put it.

4 As I rose up through the ranks and finally up to
5 Associate Warden's level, that stayed me well on getting things
6 done. I had a get-it-done reputation in the department that
7 helped me promote.

8 But unfortunately, the people skills were lacking
9 and weren't there. As a result, when I reached the level of
10 Associate Warden, I started running into problems. I'd have to
11 do disciplinary actions on staff. I'd have to make assignments
12 on staff, and sometimes I was less than -- I'm a little lost for
13 words -- less than sensitive to people when I would make my
14 decisions, or when I would tell them no on a promotion, and that
15 hurts; that hurts people.

16 And it has taken some years, and the time I spent
17 as Chief Deputy Warden and Warden to learn that. And I think
18 I'm a much better person today than I was then. I am far more
19 sensitive today to the decisions I make, and how they impact
20 people's careers and their lives than I was seven, eight years
21 ago.

22 It's a growth issue for me. I'm not perfect.
23 I'm still working on this one, but a lot more sensitive today
24 than I used to be.

25 SENATOR ROMERO: Certainly sensitivity is very
26 important, along with the expertise, and the knowledge, and the
27 leadership abilities that a warden must exhibit. Prisons are
28 very dangerous places to work. They're difficult. An emergency

1 can arise at any time.

2 And it really is important for us, who have
3 oversight of the Department of Corrections or any other
4 department in California, to make sure that we receive accurate,
5 truthful information from the wardens when questioned.

6 I want to ask you in particular about an
7 interview that was held between you and Senate Rules staff when
8 they went out to visit on May 19th of this year. The question
9 about these allegations of disparate treatment were raised to
10 you. At that time, according to the staff report that I
11 received, you had immediately indicated when asked about the
12 disparate treatment allegations, that you had immediately said,
13 "It's the first time I ever heard about this."

14 Weeks later, according to the report that I
15 received, you phoned Senate Rules staff and apologized
16 profusely, and indicated that, indeed, it was not the first time
17 that you had heard about the allegations. You later came in and
18 met with my staff, once again apologizing for not being
19 completely truthful. In fact, you had indicated something about
20 that you had been a little bit angry.

21 Can you help me understand this?

22 MR. RAWERS: Yes, Senator.

23 The allegations, as I understood them -- and
24 maybe I misunderstood the questions being asked -- but the
25 allegation as I understood them were of racial disparity [sic]
26 and preferential treatment to people based upon race.

27 These are issues that have been investigated for
28 eight years now on me. And several different investigations --

1 in fact, one of them I asked an investigation to be done to
2 clear my reputation on that issue. I am extremely sensitive to
3 that issue. I guess maybe that's helped me --

4 SENATOR ROMERO: And sir, I'm not so much asking
5 about the allegations, because according to my understanding,
6 they were found to be unsubstantiated.

7 What I am asking about was, when you were asked
8 by Senate staff to comment on the allegations, if you had heard
9 about them, that your response at that time was, "First time
10 I've ever heard about it." That's what I'm concerned about.

11 Did you know or did you not know? And if you
12 knew, which weeks later apparently you called our office and
13 said, "Gee, I'm sorry. I knew about it. I should have said
14 something."

15 I'm just wanting to find out why did you not tell
16 the staff in the first place when you were first asked, "Yes,
17 allegations were made. These are the reasons I think they're
18 not founded," rather than just saying, in a sense, covering it
19 up.

20 That's what I'm asking you to comment on.

21 MR. RAWERS: Senator, believe me, there was no
22 attempt to cover up.

23 SENATOR ROMERO: Did you first, when asked by
24 Senate staff, did you first say, "This is the first time I've
25 ever heard about it?"

26 MR. RAWERS: That is correct.

27 SENATOR ROMERO: Did you later call Senate Rules
28 staff, and later come in and meet with my staff and say

1 actually, "I'm sorry. I knew about it. I was being angry?"

2 MR. RAWERS: I called. I came in to meet with
3 your staff. I did not call the Senate Rules staff.

4 SENATOR ROMERO: You came and you met with my
5 staff?

6 MR. RAWERS: Yes, I did.

7 SENATOR ROMERO: Did you at that time, when you
8 came in to meet with my staff acknowledge that it was not the
9 first time you had heard about the allegations?

10 MR. RAWERS: Oh, certainly.

11 SENATOR ROMERO: So, why didn't you just say,
12 that's the question, why didn't you just say that when you were
13 first asked at your visit by Senate Rules staff? When asked a
14 simple question, when simply asked, why not simply just tell the
15 truth?

16 MR. RAWERS: Senator, I believed at the time, and
17 I'm certain that the Senate Rules Committee staff were aware of
18 these accusations having been investigated, and to be quite
19 frank with you, I didn't expect that question to come up because
20 I thought it had been satisfied by that time.

21 When it came up, I was surprised. I think that
22 was my first reaction, surprise. And I think the Senate staff
23 noted that, my first reaction was surprise.

24 Secondly --

25 SENATOR ROMERO: Why not just answer, then, "I
26 thought that issue had been satisfied," rather than, "It's the
27 first time hearing of it?"

28 MR. RAWERS: Because the second reaction I had,

1 and inappropriately, was anger.

2 SENATOR ROMERO: You acknowledge it was
3 inappropriate.

4 MR. RAWERS: Absolutely. And I have apologized
5 to the Senate Rules Committee and the staff for that when I came
6 around to talk to each of them.

7 SENATOR ROMERO: And I raise this issue because
8 again, it is important for me in this day and age, when we do
9 have issues which arise in our prisons, and issues for which
10 most of our wardens and most of our staff do a fine job, but
11 when we have to ask questions about did this happen, or did this
12 not happen, at the very least I will tell you, I simply expect
13 the truth.

14 And I raise it today because it is important to
15 me that when a warden comes before a confirmation hearing, I
16 don't want the warden just to say what he or she thinks I want
17 to know. I just simply want truthfulness in the response.

18 A second issue that came up as well, too, so it
19 wasn't just the first question of claiming lack of knowledge and
20 then later acknowledging, "Oh, yes, I did know, and it was an
21 inappropriate response," which, by the way, I do agree it was an
22 inappropriate response. The truth is always the appropriate
23 response, I believe.

24 But a second issue on that same visit, on May
25 19th, staff as well asked to visit Yard Six because of a
26 lockdown following a riot.

27 MR. RAWERS: That's true.

28 SENATOR ROMERO: At that time as well, staff had

1 raised to you after some interviews the allegations that prison
2 staff may have been involved in the riot.

3 At that time, according to my briefing that I
4 have received, you had dismissed it as being impossible. Once
5 again, according to the briefing I received, that after an
6 initial investigation, you once again called staff, met with
7 staff, once again apologized and indicated that your response of
8 being impossible might have been too abrupt a response.

9 Can you give me more explanation on that?

10 MR. RAWERS: That's incorrect.

11 SENATOR ROMERO: Can you correct it for the
12 record then?

13 MR. RAWERS: Yes. I never said it was
14 impossible. Anything's possible inside a prison setting.
15 Anything is possible inside a prison setting.

16 I said it was inconsistent with my experience
17 that staff members, in around-the-clock operations, with relief
18 officers present, and sick relief, and vacation relief, and all
19 of the other people who interact inside buildings, it's
20 inconsistent in my experience to believe that a conspiracy would
21 last over three watches and over a period of seven days for
22 weeks on end; that it was unlikely that that had occurred.

23 However, upon receiving that information, I
24 opened up a Category One investigation to find out if there was
25 any truth to the allegations. And as more information came in,
26 so that my staff would not be accused of a cover-up, I have
27 asked that it be elevated to a Category Two, outside
28 investigators come in and look at it.

1 I have nothing to hide there. There is nothing
2 there that I believe should not be looked at.

3 But I did not in any way say that it was an
4 impossibility.

5 SENATOR ROMERO: Thank you.

6 CHAIRMAN JOHNSON: Senator Knight?

7 SENATOR KNIGHT: No questions.

8 CHAIRMAN JOHNSON: Senator Karnette.

9 SENATOR KARNETTE: No questions.

10 CHAIRMAN JOHNSON: Witnesses in support. We can
11 ask you to wend your way up to the front and identify yourself,
12 and keep your comments relatively brief.

13 MS. ESTES: Hello again. Darlene Estes,
14 Legislative Liaison for the Association of Black Correctional
15 Workers.

16 We're in support of Mr. Rawers' confirmation.
17 Our members at Avenal State Prison are very pleased with his
18 support and leadership. So again, we are in support of his
19 confirmation.

20 Thank you.

21 MS. AGUILERA-MARRERO: Thank you again for the
22 opportunity. Suzanna Aguilera-Marrero March with the Chicano
23 Correctional Workers Association.

24 We are in support of Mr. Rawers' appointment from
25 the boarder of Oregon to the border of Mexico. We have chapters
26 and members who are aware of Mr. Rawers' extensive and
27 impressive 30-year career in the Department of Corrections.

28 I personally worked at Avenal State Prison when I

1 first came to the Department ten years ago tomorrow, and I was
2 impressed at that time. He was the AW of one of the units where
3 I worked. We were implementing the ADA, and it was a transition
4 at that time, putting ramps in with wheelchairs, trying to find
5 jobs that were appropriate for inmates. And it was a shift in
6 terms of mindset for custody. And I think that he did a
7 wonderful job at that time. I believe that he's done a
8 wonderful job since then.

9 I think that he's open to any ideas, any input,
10 and I think that that's an attribute that is important, for
11 wardens to be able to listen. And even though you're not always
12 going to get what you want, the fact that they listen to what
13 you have to say is important.

14 We are in support of Mr. Rawers, and we ask that
15 the Senate Rules Committee approve his appointment to Warden of
16 Avenal State Prison.

17 Thank you.

18 CHAIRMAN JOHNSON: Thank you.

19 Next witness in support, please.

20 MR. CRAIGHEAD: Sid Craighead, Mayor Pro Tem,
21 City of Avenal.

22 Good afternoon, Senator.

23 On behalf of the City of Avenal as Mayor Pro Tem
24 I'd like to be in favor of saying that Scott Rawers has been a
25 very good addition to our community, both through the prison,
26 helping with clean-up in the city and also in local
27 organizations and clubs, his work crews that he is puts out to
28 work in the city, cleaning up alleys, streets, helping the city

1 look a lot better than it could be -- than it is, excuse me.

2 He's been an asset through working with the
3 schools, working with the city. He comes to Council meetings.
4 He's a person that's very conscientious about his work.

5 And I, as a school teacher, I see his crews work
6 there. I work with some of his vocational classes. We very
7 much support the school and the city as much as support of Scott
8 Rawers for Warden for Avenal.

9 CHAIRMAN JOHNSON: Thank you very much.

10 Next witnesses in support, please.

11 MS. STACEY: Good afternoon, Senators. My name
12 is Darlene Stacey, and I am currently the Chairperson for the
13 Avenal Citizens Advisory Committee. This is my third time. I
14 was appointed when they originally started the Citizens Advisory
15 Committee, and I'm one of the few in the State of California
16 still left as one of the original ones.

17 So I have been active, as the committee has, in
18 Avenal at the State Prison there. And Scott makes our fourth
19 warden. And I have been personally involved with all of them
20 through the committee and through being a citizen in the City of
21 Avenal.

22 It is essential that a warden and a city walk
23 hand-in-hand. All three of our wardens and our new
24 warden-to-be, Scott, and the City of Avenal are very closely
25 knitted and committed with helping each other.

26 Mr. Rawers, I need to back up a little bit, when
27 he -- he worked at Avenal before he came back as an appointee as
28 Warden. And he did one of the most tremendous jobs. We were

1 the only prison in the State of California that had both male
2 and female that was not designed for having this. And Scott ran
3 this program so excellent, it saved the State of California lots
4 of money. And I think he forgot to note that, because I think
5 it's quite an achievement for someone.

6 He exhibits the excellent leadership, not only at
7 Avenal State Prison, but in the community as well. He is fair.
8 He is firm. He is consistent, quality of a leader. He is
9 willing to listen to new ideas, implement new policies, and he
10 keeps the public informed, especially his Citizens Advisory
11 Committee. He encourages and supports his staff to be involved
12 in the community.

13 Due to his unselfish act, he has strengthened the
14 relationship between the Avenal State Prison and the City of
15 Avenal and the communities surrounding it. We are very
16 fortunate to have Scott as our Warden, and I hope the
17 confirmation goes real great.

18 Do you have any questions?

19 CHAIRMAN JOHNSON: Next witness in support. Are
20 there additional witnesses in support?

21 MS. WHITTEN: Good afternoon, Senators. It's a
22 privilege to be before you. I'd like to state my name, which is
23 Melissa Whitten, City Manager of the City of Avenal.

24 I also would like to state that the City Council
25 did send a resolution to the Rules Committee voicing our
26 wholehearted support of Scott Rawers as Avenal State Prison
27 Warden.

28 CHAIRMAN JOHNSON: Are you going to say anything

1 different from the Mayor Pro Tem?

2 MS. WHITTEN: Maybe a little.

3 CHAIRMAN JOHNSON: If you could, move it along.

4 MS. WHITTEN: Yes, Senator Johnson.

5 He's no stranger to Avenal. That has been
6 brought out. He was there for the early activation of the
7 prison.

8 Since he was appointed Acting Warden, he's been
9 very visible to the community, and that has gone a long way.
10 We're a small, rural community, and we need those partnerships.
11 He has an excellent working relationship with the City, and I
12 can't emphasize that enough.

13 He is a true professional and is leader. He's
14 dependable, committed, and most of all, he's a good man. He's
15 proven himself over and over again.

16 I believe Avenal would be privileged and very
17 proud to see the appointment of Scott Rawers as Warden.

18 Avenal State Prison is not separate from, but
19 it's a part of our community. That's how -- for those of you
20 don't know the history, the City of Avenal, our leaders actually
21 traveled to Sacramento, requesting a prison in our community.

22 We do have a unique working relationship, and I
23 think it would be a benefit to see Scott Rawers as our Warden.
24 It's thanks to him that we have the relationship that we do.

25 Thank you very much for your time.

26 CHAIRMAN JOHNSON: Thank you.

27 Any additional witnesses in support? Witnesses
28 in opposition?

1 Do you have family here?

2 MR. RAWERS: I have my wife.

3 CHAIRMAN JOHNSON: Would you care to introduce
4 her?

5 MR. RAWERS: Certainly. Diana Gail Rawers. She
6 works at Pleasant Valley State Prison as an employee relations
7 officer over there.

8 MR. MARTINEZ: Good afternoon. My name is Nick
9 Martinez. I'm President for District Labor Council 771, and I'm
10 also a member of the Correctional Institutions Committee.

11 A little while ago, Senator Romero spoke about
12 discrimination, some alleged discrimination charges.

13 I'm here to speak about an alleged discrimination
14 comment, or discriminatory comment, that Mr. Rawers made to me
15 one day during a meeting with another vocational instructor who
16 was present.

17 By the way, I'm also a vocational instructor.

18 It was in regards to the closure of some programs
19 at Avenal State Prison. In particular, one program offers
20 machine repair, which was going to be changed into another
21 program. The program at the time, prior to being closed, was
22 teaching computer repair to inmates.

23 The question was asked of Mr. Rawers, why that
24 program was going to be changed from teaching inmates how to
25 repair computers to something else. Mr. Rawers made a comment
26 to me that, "Who's going to hire an inmate that knows how to fix
27 computers?"

28 This bothered me because a very good friend of

1 mine is a former inmate back in the '70s. He got out of prison,
2 went to work for National Cash Register in the computer field,
3 and he's very successful today. And there are other inmates
4 that get out and get jobs working in the computer field.

5 To me, that's a different type of discrimination.
6 It's a discrimination because of the fact the person is an
7 inmate.

8 I do not speak in support of Mr. Rawers. He does
9 not honor our current contract. He has had union members thrown
10 off his institution, violating the contract during the times
11 that they're out there flyering and exercising their union
12 rights.

13 The staff at Avenal State Prison, education
14 staff, would be better off being dead cats. Mr. Rawers has a
15 cat program over there where they bury dead cats. The dead cats
16 are treated with more respect than the staff are, and that
17 bothers me.

18 I ask this Committee not to confirm Mr. Rawers as
19 a Warden at Avenal State Prison.

20 Thank you.

21 CHAIRMAN JOHNSON: Thank you, sir.

22 What's the will of the Committee?

23 SENATOR KNIGHT: Move it.

24 CHAIRMAN JOHNSON: Secretary, call the roll.

25 SECRETARY WEBB: Senator Karnette.

26 SENATOR KARNETTE: Aye.

27 SECRETARY WEBB: Karnette Aye. Senator Knight.

28 SENATOR KNIGHT: Aye.

1 SECRETARY WEBB: Knight Aye. Senator Romero.
2 Senator Johnson.

3 SENATOR JOHNSON: Aye.
4 SECRETARY WEBB: Johnson Aye. Three to zero.
5 CHAIRMAN JOHNSON: Congratulations.

6 Allen Scribner, Warden, California State Prison
7 at Corcoran.

8 Welcome, sir.

9 MR. SCRIBNER: Thank you, sir. Good afternoon.
10 I'd like to thank the Committee for their time
11 today.

12 Out of the three wardens that are here, I am the
13 least experienced. I only have 28 years of service.

14 You have my resume, and I would be happy to
15 answer any questions you have.

16 CHAIRMAN JOHNSON: Is that it?

17 MR. SCRIBNER: Yes, sir.

18 CHAIRMAN JOHNSON: Twenty-eight years, and he
19 hasn't gotten into the rhythm of these things.

20 [Laughter.]

21 CHAIRMAN JOHNSON: I understand Corcoran has a
22 hospital and mental health crisis beds occupied by inmates from
23 your prison and from other institutions; is that correct?

24 MR. SCRIBNER: Yes, sir.

25 CHAIRMAN JOHNSON: Can you give us an idea of
26 your view of what the Warden's role should be in keeping health
27 care costs down?

28 MR. SCRIBNER: Well, it's a major role, since I'm

1 responsible for the budget of that prison. It's incumbent upon
2 me to ensure that the health care workers at the institution and
3 the custody staff work together hand-in-hand to get inmates
4 access to care. I think that access to care is one of the areas
5 that I can control as a warden to ensure that inmates get to the
6 proper mental and medical health care at the institution.

7 One of the things that I started last fall was,
8 we started scheduling inmates who have to go off grounds to see
9 specialists in groups, rather than send one inmate to
10 Bakersfield on Tuesday and one on Wednesday to the same doctor.
11 So, we did it in groups.

12 So that is my responsibility, is to find better
13 ways to move inmates around using less people, which in the long
14 run saves money.

15 CHAIRMAN JOHNSON: Switching gears, can you tell
16 us a little bit about lockdowns, and how often they occur?

17 MR. SCRIBNER: We've been pretty fortunate since
18 I've been at Corcoran. I got there last August. We haven't had
19 very many lockdowns.

20 When it is the proper time to lock inmates down,
21 it's of course for the safety and security of the institution.

22 My philosophy and my program regarding lockdowns
23 is pretty simple. I'll lock the inmates down. I'll find the
24 perpetrators of the disturbance, put them in Administrative
25 Segregation and segregate them from the general population. I
26 will have my staff interview inmates. My staff includes custody
27 staff, counselors, supervisors. Interview the inmates, find out
28 why the disturbance occurred. Make a determination on whether

1 or not it is safe to unlock the yard. Always I try to unlock
2 the race of inmates that are not involved in the disturbance as
3 quickly as possible.

4 After I'm sure that I have segregated the
5 troublemakers, interviewed the inmates very thoroughly, I will
6 make a determination whether it's safe to unlock the prison. I
7 will as quickly as possible.

8 CHAIRMAN JOHNSON: Senator Romero.

9 SENATOR ROMERO: Thank you.

10 I'm particularly interested in the SHU unit. I
11 understand, of course, that you've spent many years working at
12 Pelican Bay and now at Corcoran.

13 Can you describe for the Committee in particular
14 how CDC's classification policies with respect to who goes into
15 the SHU, and how you get into the SHU, and how you get released
16 from the SHU, how these have been discussed and, perhaps,
17 changed over time?

18 MR. SCRIBNER: Are we talking about determinate
19 or indeterminate SHU?

20 SENATOR ROMERO: Indeterminate.

21 MR. SCRIBNER: Gang members?

22 SENATOR ROMERO: Okay.

23 MR. SCRIBNER: Because there are some inmates
24 that we put in SHU indeterminate because they're extreme escape
25 risks and not gang members.

26 SENATOR ROMERO: We can go to that maybe later
27 on. Specifically gang members. First the validation process.

28 MR. SCRIBNER: The validation process is fairly

1 simple. Gang investigators, when they have targeted a person
2 who they believe is a gang member or associating with prison
3 gangs -- once there were three different types of evidence,
4 independent sources of evidence, to have one of the
5 investigators make a determination that the inmate is involved
6 in gang activity.

7 Then a package is put together at the institution
8 by the gang investigators. That package is then sent to the Law
9 Enforcement Unit in Sacramento, where they evaluate whether or
10 not the inmate does meet the criteria for indeterminate SHU.

11 Once that is done, we notify the inmate via 128.
12 We'll take the inmate, take him to the Security Housing Unit.
13 Within 10 days take him to classification so that he understands
14 fully the reasons he's been placed in SHU on indeterminate
15 status.

16 We let the inmate know what his appeal rights
17 are, and we review his program and behavior every 180 days.

18 SENATOR ROMERO: Do you as a warden have any
19 say-so in this matter at all? Is there any communication with
20 Headquarters with respect to the inmate going into the SHU based
21 on the validation process?

22 MR. SCRIBNER: No, I don't.

23 SENATOR ROMERO: In the year 2000, I believe it
24 was, former Warden Ayers at Pelican Bay had begun somewhat of a
25 discussion about a behavior-based validation process rather than
what we have seen take place so far.

27 Do you recall those discussions? Can you comment
28 on those discussions?

1 MR. SCRIBNER: I am not familiar with that enough
2 to comment on it, Senator.

3 SENATOR ROMERO: Do you believe that it might be
4 meritorious to have renewed discussion about, when we take a
5 look at the validation process, to maybe have some
6 behavior-based criteria as opposed to what exists at present?

7 MR. SCRIBNER: Well, I believe the criteria is
8 behavior-based. Using the three methods of validation is a
9 behavior, an observed behavior.

10 SENATOR ROMERO: Most folks would not necessarily
11 agree that that is behavior-based. I mean, it's more of an
12 identification. It's an identifier as opposed to a behavior.

13 When I'm talking about behavior, it's doing
14 something as opposed to drawing something.

15 MR. SCRIBNER: You're speaking mostly about
16 physical behavior, assaulting people or --

17 SENATOR ROMERO: Some type of criteria that might
18 be more appropriately labeled behavioral as opposed to a status.

19 MR. SCRIBNER: Do you want my opinion on it?

20 SENATOR ROMERO: Sure.

21 MR. SCRIBNER: No, I don't believe that is the
22 correct way to go.

23 I think that it's been shown in the past that
24 gang members who are in the general population, for the most
25 part, are conducting the business of an organized gang. Most of
26 them are doing it undercover. That could be running drugs,
27 stabbing people, things of that nature.

28 And sometimes those incidents happen, and they

1 get away with it. We don't have the evidence to put them in SHU
2 on a determinate SHU term.

3 And if, in fact, you had taken the three pieces
4 of evidence six months prior to something occurring and locking
5 that person up, we most likely would have avoided a crime.

6 SENATOR ROMERO: Do you have an estimate on how
7 much it costs on average to house an inmate at the SHU there at
8 Corcoran?

9 MR. SCRIBNER: I'd be guessing. It's about, I'd
10 say, 28 to 30 thousand a year.

11 SENATOR ROMERO: Thank you.

12 CHAIRMAN JOHNSON: Senator Knight.

13 SENATOR KNIGHT: No questions.

14 CHAIRMAN JOHNSON: Senator Karnette.

15 SENATOR KARNETTE: I didn't quite understand when
16 you were talking to Senator Romero about the identification,
17 behavior versus identification. I understand behavior, physical
18 behavior.

19 But the question you asked about identifying
20 them, then you said they did things undercover. Does that mean
21 law enforcement does not know they're gang members?

22 MR. SCRIBNER: That's correct. We have to
23 investigate inmates to determine which ones are gang members.
24 That's why we have gang investigators in the institution, is to
25 identify these people and get them off of the main line, and get
26 them segregated so the other inmates can program properly.

27 SENATOR KARNETTE: You don't know they're gang
28 members when they are sentenced for a crime. Is that what

1 you're telling me?

2 MR. SCRIBNER: That's correct, unless they've had
3 a prior sentence and we had information on them from a prior
4 term.

5 SENATOR KARNETTE: So, you have undercover. In
6 the prison itself you have to determine whether they're running
7 a gang operation inside the prison?

8 MR. SCRIBNER: Yes. We use the gang
9 investigators to find out who the gang members are on the main
10 line and then segregate them.

11 SENATOR KARNETTE: A smart gang member probably
12 wouldn't have any physical identification marks?

13 MR. SCRIBNER: A smart one wouldn't; that's
14 correct.

15 [Laughter.]

16 CHAIRMAN JOHNSON: Witnesses in support, please.

17 MS. ESTES: One more time. Darlene Estes,
18 Legislative Liaison, Association of Black Correctional Workers.

19 We are in support of Warden Scribner's
20 confirmation. Information from members there was that he is
21 upright and very approachable. So again, we're in support of
22 his confirmation.

23 Thank you.

24 CHAIRMAN JOHNSON: Thank you very much. We
25 appreciate your brevity as well as your testimony. Thank you.

26 MS. AGUILERA-MARRERO: I thank you again for
27 affording me the opportunity to speak on behalf of the Chicano
28 Correctional Workers Association. I'm Suzanna Aguilera-Marrero.

1 The Chicano Correctional Workers Association is
2 in support of Mr. Scribner for the appointment to Warden at
3 Corcoran State Prison.

4 I have worked at Corcoran State Prison in the
5 past, and I'm aware of the task involved in managing a prison
6 with multi missions, such as Corcoran has. They have the SHU
7 unit. They have a Level I that's a secure Level I. They have
8 Level IV. They have hospitals. They have an AIDS unit. They
9 have so many missions for ADA that they have to be able to shift
10 gears insofar as the state of mind, again, from corrections and
11 custody. The team out there has to learn to work together.

12 And we surveyed some of the members there, and
13 they are impressed with Mr. Scribner's ability to go out there.
14 He's a walk-the-line kind of person, in that he has promoted
15 through the ranks and has his finger on the pulse of what can
16 happen at an institution on a worst-case scenario, and is able,
17 capable, and willing to make decisions that are hard to make.
18 They're not always easy. Take in all the information and
19 evidence into consideration before acting.

20 We are in support of his appointment, and we ask
21 that the Senate Rules Committee endorse his appointment.

22 Thank you very much.

23 CHAIRMAN JOHNSON: Thank you.

24 Next witness, please.

25 MR. HOYT: I'm Correctional Lieutenant Rand Hoyt
26 from CSP Corcoran, representing the California Correctional
27 Supervisors Organization, Chapter 21 for Corcoran.

28 We are in support of Mr. Scribner's appointment

1 to Warden at CSP Corcoran. And there's several areas that we
2 were in support with. One is, he will meet and confer with his
3 supervisors at the institution. He's proven that.

4 I'm also fortunate enough to work for him
5 directly as an investigator at the institution, and he is very
6 proactive in the way he handles the business at the
7 institution. And I'm very much in support to him personally as
8 well.

9 So, I want to thank you for your time today.

10 CHAIRMAN JOHNSON: Thank you, sir.

11 Next witness, please.

12 MR. TATUM: I'm Richard Tatum, State President of
13 California Correctional Supervisors Organization. A 33-year
14 Department of Corrections veteran myself.

15 I've known Mr. Scribner for 28 years of his
16 career, when he was a brand-new correctional officer, working
17 the day he came to work.

18 One of the things that we insist upon as an
19 organization is honesty and integrity. Mr. Scribner has all of
20 that. He works with his staff there. The chapter is
21 supportive.

22 On a personal note, I've known in guy for a lot
23 of years, and I think that he will make an excellent warden.

24 CHAIRMAN JOHNSON: Thank you very much, sir.

25 Any additional witnesses in support?

26 Witnesses in opposition?

27 Do you have any family you'd care to introduce?

28 MR. SCRIBNER: Yes, sir. My wife of 26 years,

1 Joanie, the here; my mother --

2 CHAIRMAN JOHNSON: So, you were employed?

3 MR. SCRIBNER: Yes, sir.

4 [Laughter.]

5 MR. SCRIBNER: My mother, Della Cost is here;
6 and my brother Larry Scribner and his wife Carole.

7 SENATOR KARNETTE: Move.

8 CHAIRMAN JOHNSON: Secretary, call the roll.

9 SECRETARY WEBB: Senator Karnette.

10 SENATOR KARNETTE: Aye.

11 SECRETARY WEBB: Karnette Aye. Senator Knight.

12 SENATOR KNIGHT: Aye.

13 SECRETARY WEBB: Knight Aye. Senator Romero.

14 SENATOR ROMERO: Aye.

15 SECRETARY WEBB: Romero Aye. Senator Johnson.

16 CHAIRMAN JOHNSON: Aye.

17 SECRETARY WEBB: Johnson Aye. Four to zero.

18 CHAIRMAN JOHNSON: Congratulations.

19 All right, we are going to take about a
20 five-minute break to allow the feeling to return.

21 [Thereupon a brief recess
22 was taken.]

23 CHAIRMAN JOHNSON: The Committee will be back in
24 order.

25 Alson Brizard, Member of the California Regional
26 Water Quality Control Board, Central Valley Region.

27 Was I close to the Alson?

28 MR. BRIZARD: Yes, as close as anybody gets, and

1 that's right, too.

2 CHAIRMAN JOHNSON: Better and better.

3 If you'd care to make an opening statement?

4 MR. BRIZARD: Well, this is the first time I've
5 ever been in the State Capitol. I'm 73, born and raised in
6 California, and I've never been here, and to say that I'm a bit
7 overwhelmed.

8 But I don't really have an opening statement. I
9 had sent a resume in earlier at the request of Senator Burton.
10 And I'm just here to answer any questions you might have.

11 CHAIRMAN JOHNSON: There was, I think, some
12 controversy about an action taken by the board earlier in the
13 year. After indicating a public comments period would be
14 extended and then, suddenly, without prior notice, the matter
15 was taken up the prior month.

16 Have I got the facts essentially correct?

17 MR. BRIZARD: You've got the allegations right,
18 yes.

19 CHAIRMAN JOHNSON: Do you want to set me straight
20 on the facts?

21 MR. BRIZARD: Well, I think there was a good
22 degree of misunderstanding on the part of all sides. There were
23 two or three sides involved, and upon reading and rereading the
24 transcript, and whatever, why -- and I think the controversy is
25 -- how do I put this -- has died down. I don't think it was
26 quite what was trumped up to be in the first place.

27 CHAIRMAN JOHNSON: Let me ask you this. With the
28 benefit of 20-20 hindsight, which is always helpful --

1 MR. BRIZARD: Yes.

2 CHAIRMAN JOHNSON: -- do you think that maybe the
3 action was ill-considered, given that there'd been --

4 MR. BRIZARD: Yes.

5 CHAIRMAN JOHNSON: There was previous indication
6 that public comment would be available until, I think, the end
7 of May?

8 MR. BRIZARD: Let me put it this way. We're a
9 citizen board. And several of us on there just aren't used to
10 some of the workings of the Bagley-Keene Act and other things.

11 And I think that we probably -- that we
12 mistakenly thought something to be, and it wasn't to be. So, we
13 made a mistake.

14 I'm hoping maybe at our next board meeting in a
15 couple of weeks we will rescind that, or not rescind it, but
16 correct the situation.

17 CHAIRMAN JOHNSON: That's why they put erasers on
18 pencils.

19 MR. BRIZARD: Yes, sir.

20 CHAIRMAN JOHNSON: Senator Knight.

21 SENATOR KNIGHT: No questions.

22 CHAIRMAN JOHNSON: Senator Karnette.

23 SENATOR KARNETTE: I think it's admirable that
24 you've lived this long without coming to this Capital. I don't
25 know how that could happen. What happened to his teachers?

26 MR. BRIZARD: I've only been in Sacramento a
27 couple of times. I got lost here this morning.

28 [Laughter.]

1 SENATOR KARNETTE: Well, I'd invite you come to
2 our office and see a real Senator's office.

3 I congratulate you, though. And I know we talked
4 earlier, and I don't have any problems.

5 MR. BRIZARD: Thank you.

6 SENATOR KARNETTE: I just want to commend you for
7 coming.

8 MR. BRIZARD: Thank you.

9 CHAIRMAN JOHNSON: Witnesses in support?

10 Witnesses in opposition?

11 Do you have any family you'd care to introduce?

12 MR. BRIZARD: No, my wife stayed at home. We
13 live up by Yosemite, and quite frankly, she likes it better up
14 there than she does down here in Sacramento.

15 [Laughter.]

16 CHAIRMAN JOHNSON: This is highly unprecedented.
17 Therefore, Senator Knight moves the nomination. Secretary, call
18 the roll.

19 SECRETARY WEBB: Senator Karnette.

20 SENATOR KARNETTE: Aye.

21 SECRETARY WEBB: Karnette Aye. Senator Knight.

22 SENATOR KNIGHT: Aye.

23 SECRETARY WEBB: Knight Aye. Senator Johnson.

24 CHAIRMAN JOHNSON: Aye.

25 SECRETARY WEBB: Johnson Aye. Three to zero.

26 CHAIRMAN JOHNSON: Congratulations.

27 MR. BRIZARD: Thank you, sir.

28 CHAIRMAN JOHNSON: Robert Schneider, Member,

1 California Regional Water Quality Control Board, Central Valley
2 Region as well.

3 Good afternoon, sir.

4 MR. SCHNEIDER: Good afternoon. My name is
5 Robert Schneider.

6 It's a pleasure to be here. I just want to say,
7 as you all recognize, clean water is one of the most vital,
8 important issues to the State of California the people here
9 face. All the polls and indications that I have seen show that
10 Californians overwhelmingly desire clean water.

11 I just want to commend the Legislature and the
12 administration for the strong support that they've shown for
13 clean water programs in this state.

14 I think in the time I've been at our board, we've
15 made a lot of positive steps. We've made a lot of progress.
16 That's a credit to our staff, and it's a credit to the support
17 from you folks, so thank you.

18 I'm ready to answer any questions.

19 CHAIRMAN JOHNSON: On the issue that we were just
20 talking about, the matter that was voted on after an indication
21 that it would be held for a time, there's been some talk about
22 this being kicked up to the State Board, do you think this would
23 be better dealt with at your level? What is your opinion?

24 MR. SCHNEIDER: I tend to be in favor of dealing
25 with issues at the local level to the extent we can.

26 This regional board, I think, has the expertise
27 to do an excellent job in working through this issue of
28 irrigated ag return flow. We will do that at our July meeting,

1 and as Mr. Brizard mentioned, we will acknowledge, I think, the
2 problems that we had and try and rectify those problems to start
3 our meeting off, and then we'll move forward.

4 This will go before the State Board, and then I
5 think that's appropriate also. It's a statewide issue, and it's
6 a major issue. It's one of the most important clean water
7 issues that I think certainly while I've been on the board we've
8 ever dealt with. I think it's one of the most important issues.
9 I mean, it's very significant policy issue.

10 So, I think starting at our level, going through
11 our procedure, and reviewing that at the state level is
12 certainly the appropriate steps to take on this issue.

13 CHAIRMAN JOHNSON: Senator Knight.

14 SENATOR KNIGHT: No questions.

15 CHAIRMAN JOHNSON: Senator Karnette.

16 SENATOR KARNETTE: No questions.

17 CHAIRMAN JOHNSON: Witnesses in support.

18 MR. MAGAVERN: Good afternoon, Mr. Chairman,
19 Committee Members. I'm Bill Magavern with the Sierra Club
20 California.

21 I'm happy to be here to support Mr. Schneider's
22 confirmation to the Central Valley Regional Water Quality
23 Control Board. I've testified before his board. I believe that
24 Mr. Schneider's very concerned with open and fair public
25 processes, that his style is to bring the parties together, and
26 that he is doing a good job with a very difficult task of
27 grappling with some of the really serious issues before this
28 board.

1 I did want to address the issue that Senator
2 Johnson has raised, and thank you for bringing that up.

3 The board has been trying to deal, under
4 Mr. Schneider's leadership, with this issue of the return flows
5 from irrigated agriculture.

6 In our opinion, the board's actions have abused
7 the public process. That was not the fault of Chairman
8 Schneider but was done over his objections.

9 However, because of the conflict of interest of
10 one of the board members, the Attorney General has concluded
11 that that conflict has irreparably tainted the actions of the
12 regional board. So, we do believe that that issue should go
13 directly to the State Board. So, we have a slight difference of
14 opinion with Mr. Schneider on that, but we appreciate the fact
15 that he's willing, at the regional board level, to try to deal
16 with this issue.

17 We strongly support his confirmation.

18 CHAIRMAN JOHNSON: Thank you, sir.

19 Any other witnesses in support?

20 Witnesses in opposition?

21 What's the pleasure of the Committee?

22 SENATOR KARNETTE: Move it.

23 CHAIRMAN JOHNSON: Secretary, call the roll.

24 By the way, do you have any family here?

25 MR. SCHNEIDER: No, I spend a lot of time on this
26 job, and all I can say is, I'm glad my wife's working.

27 CHAIRMAN JOHNSON: I take it this is not your
28 first trip to the State Capitol?

1 MR. SCHNEIDER: No, I've been here before.

2 CHAIRMAN JOHNSON: Secretary, call the roll.

3 SECRETARY WEBB: Senator Karnette.

4 SENATOR KARNETTE: Aye.

5 SECRETARY WEBB: Karnette Aye. Senator Knight.

6 SENATOR KNIGHT: Aye.

7 SECRETARY WEBB: Knight Aye. Senator Johnson.

8 CHAIRMAN JOHNSON: Aye.

9 SECRETARY WEBB: Johnson Aye. Three to zero.

10 CHAIRMAN JOHNSON: Congratulations.

11 MR. SCHNEIDER: Thank you.

12 CHAIRMAN JOHNSON: Gerald Cochran, Member,
13 California Regional Water Quality Control Board, North Coast
14 Region.

15 MR. COCHRAN: Good afternoon, Senators, Members,
16 staff members.

17 I'm Gerald Cochran, of course. I've served as
18 the elected Assessor of Del Norte County for 33 years. I've had
19 lots of experience coming to this body and the Assembly side,
20 the lower house.

21 And I've served on a couple of commissions that
22 the Rules Committee has placed me on, one being the Property Tax
23 Equity and Revenue in 1990, and also on the Legislative Task
24 Force in 1978 and '79, which fortunately or unfortunately, I was
25 President of the California Assessors Association in 1979.

26 I submitted my name to the Governor for
27 appointment to this board. I'm a 55-year resident of Del Norte
28 County. I believe in clean water. I think the Smith River is

1 probably the pearl of all water systems and water courses in
2 California.

3 I fully intend to take the decisions that lead to
4 good water quality and for all the beneficial users.

5 I appreciate the opportunity to appear before you
6 today. I'd be happy to answer any questions.

7 CHAIRMAN JOHNSON: Thank you, sir.

8 How do you view your board's role in the approval
9 of timber harvest plans?

10 MR. COCHRAN: Sir, we shouldn't be in the timber
11 harvest business, but we are, and we are --

12 CHAIRMAN JOHNSON: To answer the question,
13 should the board have a larger role, I take it that that leads
14 to no, they shouldn't.

15 MR. COCHRAN: We're moving in that direction. We
16 are issuing waivers for the timber harvest plans.

17 There has been a dispute between the habitat and
18 conservation area with Pacific Lumber and the Headwater Forest
19 sale and ourselves.

20 We're taking a nonconcurrence stand. I think we
21 should make those decisions and stay with them. We're causing
22 those harvest plans that we think are not adequate to do
23 monitoring, and I think we're moving in the right direction.

24 Some of the problems we've had that I see is that
25 the legacy of our forefathers, we can't correct that, but we can
certainly stop anything from this point forward. And I think
the board has done that, and they're doing that.

28 CHAIRMAN JOHNSON: There's some pretty deviousive

1 issues.

2 MR. COCHRAN: Yes, there are. There's more than
3 just timber, believe me.

4 CHAIRMAN JOHNSON: How do you propose to be fair
5 to all sides?

6 MR. COCHRAN: I've been the Assessor for 33 years
7 and elected nine times. I've managed to balance both sides, the
8 good and the bad.

9 I think, in fact, I told some of the staff
10 members, I think I'm the only person, other than the
11 environmental groups, that sue the timber companies, but it's
12 over evaluation issues, so I have friends on both sides of the
13 aisle. I've always been fair.

14 I guess, you know, how do you stay involved? I
15 believe in Del Norte County, the north coast. Being a resident
16 for 55 years, you've got to love that area, and I do.

17 CHAIRMAN JOHNSON: Senator Knight.

18 SENATOR KNIGHT: My questions would be on another
19 subject.

20 MR. COCHRAN: Leave the assessor stuff out of
21 this for now, Senator.

22 SENATOR KNIGHT: No questions.

23 CHAIRMAN JOHNSON: Senator Karnette.

24 SENATOR KARNETTE: We talked a little bit.. Since
25 we were to the Floor, I couldn't really -- we talked in my
26 office for a little while.

27 As you know, as I mentioned, I'm really
28 interested in watershed, and the whole area, the whole idea of

1 watershed, and timber companies, and the environmentalists, and
2 doing what you're trying to do, working together.

3 And I appreciate the fact that you say you really
4 feel like you should be interested in the quality of water, but
5 you do have to take on all these other issues.

6 One of the questions that I really feel like the
7 scientific, I mentioned this, the Scientific Review Panel, are
8 they ever going to get to anything and do anything to help solve
9 this problem that you're faced with?

10 MR. COCHRAN: They gave their report in January.
11 Of course, I mentioned that I had a conflict at that meeting; I
12 could not be there.

13 We've involved them to continue the study, to
14 give us some finite answers. Hopefully, that's going to help us
15 in the direction that we need to go to help prevent any
16 additional sediment being put into the water courses.

17 SENATOR KARNETTE: I'm not asking for legislation
18 particularly, but do some of these things need legislation? I
19 mean, if it takes forever, we should be able to get something
20 done.

21 How can we help?

22 MR. COCHRAN: I think the Board of Forestry needs
23 better tools or maybe people to assist them in their jobs so
24 that they can issue these harvest plans that are legitimate. I
25 shouldn't say -- they're all legitimate because they're governed
26 by law -- but to give them support to determine whether or not
27 they need more input from, say, water quality, or Fish and
28 Game.

1 I think that there's a process working now, and
2 we are involved with working with the board, to give everyone
3 input into these harvest plans. Our board has issued some
4 nonconcurrences, and I think they've ignored our input, and I
5 don't think that's adequate.

6 I think we may need some additional strength in
7 our side so that we can make those decisions and force some
8 people to monitor the things that they're doing.

9 SENATOR KARNETTE: I see Mike Thompson's one of
10 your supporters. We ought to talk to Mike about that.

11 MR. COCHRAN: Thank you.

12 SENATOR KARNETTE: He knows everybody in your
13 area, I would guess.

14 MR. COCHRAN: He's very helpful, thank you.

15 CHAIRMAN JOHNSON: Not 55 five years' help.

16 Witnesses in support.

17 Witnesses in opposition.

18 Do you have any family with you, sir?

19 MR. COCHRAN: No, I don't. My wife stayed at
20 home. Someone has to work in the family.

21 CHAIRMAN JOHNSON: What is the pleasure of the
22 Committee?

23 SENATOR KNIGHT: Move.

24 CHAIRMAN JOHNSON: Secretary, call roll.

25 SECRETARY WEBB: Senator Karnette.

26 SENATOR KARNETTE: Aye.

27 SECRETARY WEBB: Karnette Aye. Senator Knight.

28 SENATOR KNIGHT: Aye.

1 SECRETARY WEBB: Knight Aye. Senator Johnson.

2 CHAIRMAN JOHNSON: Aye.

3 SECRETARY WEBB: Johnson Aye. Three to zero.

4 CHAIRMAN JOHNSON: My congratulations.

5 MR. COCHRAN: Thank you very much.

6 [Thereupon this portion of the
7 Senate Rules Committee hearing
8 was terminated at approximately
9 3:12 P.M.]

10 ---ooOoo--
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1 CERTIFICATE OF SHORTHAND REPORTER

2
3 I, EVELYN J. MIZAK, a Shorthand Reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing transcript of the Senate Rules Committee hearing was
7 reported verbatim in shorthand by me, Evelyn J. Mizak, and
8 thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said hearing, nor in any way
11 interested in the outcome of said hearing.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 27th day of June, 2003.

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EVELYN J. MIZAK
Shorthand Reporter

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**CALIFORNIA CORRECTIONAL INSTITUTIONAL
ARTHUR CALDERON, WARDEN
QUESTIONS AND RESPONSES FOR SENATE RULES COMMITTEE**

STATEMENT OF GOALS

- ✓ *Please provide a statement of goals describing what you hope to accomplish during your service as Warden.*

It is my goal to:

1. Operate the California Correctional Institution (CCI) in a safe and secure manner for staff, inmates, and the public at large.
2. Be a good steward in the trust of the citizens of California.
3. Attempt to parole a better and more productive person, than was first incarcerated.
4. Improve Education/Vocation opportunities for the inmate population despite shrinking resources.
5. Minimize lockdowns and modified programs that impact inmate programs.
6. Significantly reduce deficit driving overtime.
7. Reduce the amount of illegal drugs smuggled into the institution.
8. I will continue to work diligently, honorably, responsively, and well with a broad variety of people, making myself both visible and accessible to one and all.

- ✓ *Are there any changes to your last submitted Form 700, Statement of Economic Interest?*

There are no changes.

INCARCERATED YOUTH

- ✓ *Please provide data for all currently incarcerated youth indicating the date of reception and the date the inmate was placed in programming. What steps are you taking to reduce processing times for those inmates?*

California Correctional Institution (CCI)'s YOP Correctional Counselor has developed a Reception Process Tracking Sheet, which reflects all Process Cases, identifying each stage of processing for every Inmate. The tracking sheet is utilized to identify any delays. The tracking sheet is routed weekly to the Chief Deputy Warden, Associate Warden-IVB, Chief Medical Officer, Health Care Manager, Facility Captain-IVB, and the IVB Unit Lieutenant, who are then responsible for resolving delays. To correct delays associated with awaiting Classification Services Representative endorsement, CCI's Classification & Parole Representative now endorse YOP cases. These measures have been implemented and are designed to expedite the processing of YOP Inmates.

Additionally, a review of our processes indicates that if a Reception Inmate was placed into an Administrative Segregation Unit (ASU), the reception processes continued, however, the inmate was not referred to the CSR until released from ASU. This resulted

STATEMENT OF GOALS

1. Please provide a statement of goals describing what you hope to accomplish during your service as Warden.

My #1 goal is to provide a safe and secure environment for inmates and staff alike and to provide for the overall safety of the public. To this end, I plan to upgrade both the physical plant and the security operations of the facility commensurate with the mission and changing profile of the inmate population.

In addition, I strongly intend to expand open and informal communication between inmates and staff, the institution and the community. It is my belief that by doing so we can resolve issues, both quickly and more efficiently, while providing a safe living/working environment.

Another of my goals is to establish standardized institutional policies and procedures in order to provide continuity throughout the institution, and to reflect the standardized approach of the Department's policies.

I intend to expand and promote the institution's involvement within the various neighborhoods in which we live. This not only helps to bridge the gap, but also provides the opportunity to take an active role in the betterment of our communities.

My final goal is, in spite of these times of budget crisis, to find ways to expand on available programs for inmates through creative initiatives, which will reduce violence, inmate idleness and prepare the inmates for eventual re-integration into society.

BUDGET

2. Are you planning any significant budget reductions during the current fiscal year and next fiscal years? How will these reductions affect inmate programming, staffing and health and mental health care of inmates? Are you currently operating within your authorized budget?

Based on the Governor's proposed budget, Avenal State Prison is anticipating the loss of three management positions and fifteen educational staff.

The three management positions currently identified are:

- Correctional Administrator (Associate Warden) (1.0)
- Facility Captain (1.0)
- Correctional Captain (1.0)

California State Prison-Corcoran

I STATEMENT OF GOALS

- Please provide a statement of goals describing what you hope to accomplish during your service as Warden.

Faced with this unprecedented fiscal crisis, I plan to lead the employees of the California State Prison-Corcoran in a manner that encourages innovative thinking to find better ways to do business with less money. This requires us to look at our operation in a new light and develop nontraditional methods of providing services to inmates with less staff.

We will also focus on better access to and a level of medical and mental health care that is constitutionally required. In keeping with our fiscal responsibilities, this will involve bringing medical practitioners into the prison to provide care rather than take inmates into the community. This will provide more safety to the public and reduce transportation costs.

We are planning on moving inmates who require mental health treatment to one facility. This will allow us to concentrate our mental health practitioners in one area and provide more frequent and direct treatment of inmates. We believe that this innovative idea will result in our being able to meet the mandates of the Coleman requirements regarding adequate treatment of mentally ill inmates.

In order to meet these goals, it is imperative that I provide leadership and direction to the nineteen hundred plus staff who work at Corcoran. This is accomplished by encouraging innovative thinking and embracing new ideas.

My philosophy for leadership and managing employees is: Staff must be given the tools to do their job, be provided with the proper training, be empowered to do their job and held individually accountable for their actions. And finally, they must be acknowledged when they do a good job.

Alson Brizard
19483 Elder Lane
Groveland, CA 95321

10 June 2003

Senate Rules Committee
State Capitol-room 420
Sacramento, CA 96814

Dear Committee Members:

In response to Senator Burton's request, I have prepared a statement outlining my short and long term goals in the coming years for the Water Quality Control Board, Central Valley Region.

I feel that the Water Quality Control Board is fast becoming one of the most important "Citizens" Boards in our state. Water quality, along with Air quality, are very important issues today for "we the people" in this state.

Since I started serving on this Board in November 2000, the issues that we have addressed have become increasingly complex and contentious. As of our last Board meeting, June 6 2003, there have been 26 lawsuits and petitions filed that are still pending, over actions and decisions we have made. I think that we shall prevail in a vast majority of these cases, since we have a very capable and thorough staff. Their track record to this date has been very good.

I think that the very fact that there are so many challenges to our decisions illustrates how complex the water quality issues are.

It is my belief that our function as a Board is to interpret the existing laws, and to insure, within the confines of both the Federal Clean Water Act and our own Porter-Cologne Act, the fair and even-handed enforcement of the regulations surrounding these laws. This would be my long-term goal for this Board.

In the short-term, we are just now starting to come to grips with 3 or 4 issues that come under our jurisdiction and are just starting to address these impacts to water quality. These issues include;

- * Timber Harvesting Impacts
- * Discharges from Irrigated Lands
- * Storm Water Runoff from all Urban Areas
- * Septic Tank Discharges from both Urban and Rural areas

Of these four, the first two seem to be of the greater concern to the Environmental Community, while the last two have generated somewhat less concern up till now.

Timber Harvesting has been somewhat regulated by our Board, thru working with the Board of Forestry in the past. We are now beginning to take a proactive approach and are working with the Timber Industry directly.

The Irrigated Agricultural Lands have never been regulated and represent a very large portion of our region (several million acres), and a large amount of potential dischargers (25,000+). It will require a significant amount of our staff resources just to catalog and identify these dischargers. Willing cooperation from this many dischargers will be of great value in achieving water quality objectives, in a timely fashion, on the rivers and streams that are being impacted.

Stormwater Runoff from Urban areas is now going to involve Cities and Towns of 10,000 population or greater. Many of these smaller urban areas are already experiencing financial problems in meeting the new regulations concerning sewage effluent disposal. The new Stormwater regulations will pose an additional burden. We will have to be very creative in our enforcement activities to assist these communities as much as possible.

The Septic Tank problem grows by the day, as folks in the large cities move out into more rural areas to get some space and fresh air. The building boom that is occurring in the foothill areas of our Central Valley is a good indicator of this increasing problem. Often times the percolation rates in the shallower foothill soils are not the best, insofar as the effluent disposal from the average septic tank is concerned.

These four areas, above, I see as being the near-term issues that we will need to resolve, both fairly and as expeditiously as possible.

Thank you for the time it took to read this (I get a little long-winded sometimes) and I look forward to meeting with you on June 18, 2003.

Sincerely;

Alson Brizard
Alson Brizard, Member
Water Quality Control Board, Central Valley Region

Senate Rules Committee

June 18, 2003

Robert Schneider, Chair

Regional Water Quality Control Board, Central Valley Region's

The Regional Water Quality Control Board, Central Valley Region's mission is to protect, restore and enhance the waters of the state of California from the Oregon border on the Pitt River to the Tehachapi; and from the Sierra Crest to the inner coast range including drainages to Clear Lake and Lake Berryessa.

It is a large area, about 40 percent of the state and represents all or part of 38 counties. We have three offices in Redding, Sacramento and Fresno, a \$25 million budget and currently 226 employees.

Clean water is vitally important. All polls that I have seen show that Californian's overwhelmingly desire clean water. And, the legislature and the administration have strongly supported clean water programs.

Unfortunately, we have not gotten off to a good start this year.

You all are aware of the accusations and ethical questions that we face that arose around the irrigated agricultural return flow issue. It is indeed unfortunate. Let me assure you that we are taking actions to meet this challenge head on and we will restore the integrity of our Board.

Each of us that serve on the Board is appointed to provide knowledge on a particular segment of society; however, it is our mandate that we each serve all people of California whether they live in cities, on farms or in rural communities. It is an awesome responsibility.

I would like to summarize some of our more challenging issues.

Non-Point source:

During the last 30 years we have made great strides in controlling point source pollution from factories and waste treatment plants. As a society we have now turned our attention to the other half of the problem that is non-point source pollution. This includes storm water runoff, dairies, timber, and irrigated agricultural runoff. It is a much more difficult issue because of the diffuse nature of the problem and often has more to do with educating folks to change their behavior than imposing a prescribed treatment.

Storm Water Programs:

The development of storm water programs requires an adaptive management approach. We develop a program, assess its strengths and weaknesses, and then develop additional guidelines to resolve remaining pollution issues.

We are currently in a second phase of permitting that provides more stringent standards and begins to look at smaller communities.

Unlike waste treatment plants that are considered services with associated fees, storm water programs are considered tax levees subject to proposition 218. This puts these programs in direct competition for community funds with police, fire and recreation. We must have these programs to clean the water, but funding is of serious concern.

Irrigate Agricultural Return Flows:

There are about seven million acres of irrigated farmland in our Region that apply fertilizer, pesticides and cause sediment runoff. In many areas it is a serious water quality issue. For many years agriculture was exempted from water quality discharge standards under a waiver system. However, under SB 390 we are presently reexamining all waivers. Our challenge is to develop a system that will ensure that the waters of the State are protected, while providing adequate time for agriculture to adapt their practices and minimize costs. To the extent possible, we must focus our resources on the problem areas and work creatively with other state agencies to achieve water quality objectives without undue duplication.

We will have a public hearing on July 9-10 to again address this issue. To date the Board has approached this issue through a conditional waiver utilizing a watershed approach. Key issues to both the agricultural and environmental communities revolve around accountability and identification; and monitoring and quality insurance protocols, public participation and the ability to fund the program.

This will be a big change for agriculture, and to their credit they have made efforts to move forward in a constructive manner. However, this cannot be a "trust me" program. There must be accountability; adequate monitoring with appropriate protocols; and an implementation program to ensure progress is made.

One of our quandaries is that if we develop a water discharge requirement permitting system for agricultural dischargers we can require fees to administer this program and we can require direct accountability by individual discharges. However, a top down regulatory program may not be manageable or achieve water quality objectives throughout the Central Valley in an effective manner.

If we utilize a watershed approach through a conditional waiver program we cannot charge an annual fee to administrate the program or require direct accountability. Yet, in many respects this cooperative approach utilizing industry goodwill and creative strategies may be the most effective way to achieve implementation of water quality objectives.

The ability to charge for services on waivers would help to resolve this quandary, and develop the most effective system for agriculture to ensure that the people of the state have clean water.

Point source:

Wastewater treatment requirements have been strongly upgraded to meet new Department of Public Health standards and California and Federal Toxic Rules. Increased chemicals in the environment, improved detection methods and new a understanding of the impact of very small concentrations of "body toxics" must be considered.

In the Central Valley many communities are faced with upgrading to tertiary treatment to meet these new standards. This cleans the water, but it also increases energy consumption and has other environmental impacts. In addition, even if many of these communities can afford the initial capital costs, operation and maintenance cost substantially increase.

Groundwater:

We must protect our groundwater basins. Properly managed and protected groundwater basins offer the most practical, realistic, and timely opportunity to store and increase California water supplies. You are familiar with the MTBE and perchlorate problems. We also have leaking underground storage tanks, problems with septic systems, nitrate and salt build up and other groundwater problems that must be addressed.

Funding challenges:

When we began water pollution clean up major bond funding existed to help with needed wastewater facilities. We are fortunate to have funding from Proposition 13, 40 and 50 and the Bay Delta Authority. But, these funds do not begin to meet the challenges. As I have discussed we must implement major upgrades in storm water controls, waste treatment standards, and agricultural discharges.

Planning:

Planning programs are not popular, yet planning is a vital component to the development of a logical, fair and successful strategy to protect clean water. CalEPA and State Water Board Leadership have done an excellent job in providing developing a strategic plan overview. But at the Regional Board level much remains to be done.

We must have adequate resources to accomplish:

- Ambient monitoring of both surface and ground water.
- Implementation of Basin Plan tri-annual review recommendations.
- Completion and implementation of Total Maximum Daily Load (TMDL's) plans for impaired water bodies.
- Review of EIR's to provide front-end guidance and avoid expensive backend water pollution problems.

Backlogs:

Our Board continues to have NPDES and WDR backlogs. We have made significant progress, but it is hard work. Currently, our staff is at times diverted to other priority projects, such as the irrigated agricultural return flow issue.

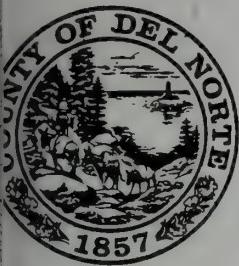
Summary:

Our task is daunting. But, we continue to make progress to protect and clean the waters of the State. We must now manage more challenges with fewer resources.

One example may be the periodic use of enforcement teams. Team members would be pulled from various programs at the Board. The teams might be formed around storm water or dairies for one or two week period. These teams would substantially augment the staff dedicated to any of these programs for a short period of time. A team would receive some issue specific training and then focus on enforcement in a particular location for a specific period of time.

This approach was successfully used in Roseville to look at storm water issues during a storm event. Perhaps the most interesting discovery was finding just how many folks were already doing a good job. Sometimes we don't trumpet successes like we should. But, they are happening.

Thank you for the opportunity to appear before you to discuss the vital issue of Clean Water.



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OFFICE OF THE ASSESSOR

June 6, 2003

Honorable John L. Burton
Chairman, Senate Rules Committee
Attn: Nettie Sabelhaus
Room 420, State Capitol
Sacramento, Ca 95814-4900

RE: Confirmation Hearings, North Coast Regional Water Quality Control Board

Dear Senator Burton:

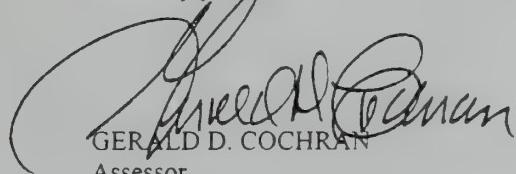
I have been asked to submit a brief statement outlining my short term and long term goals for the Regional Board in the coming years. I submit the following to you and The Rules Committee to help you in my confirmation hearing.

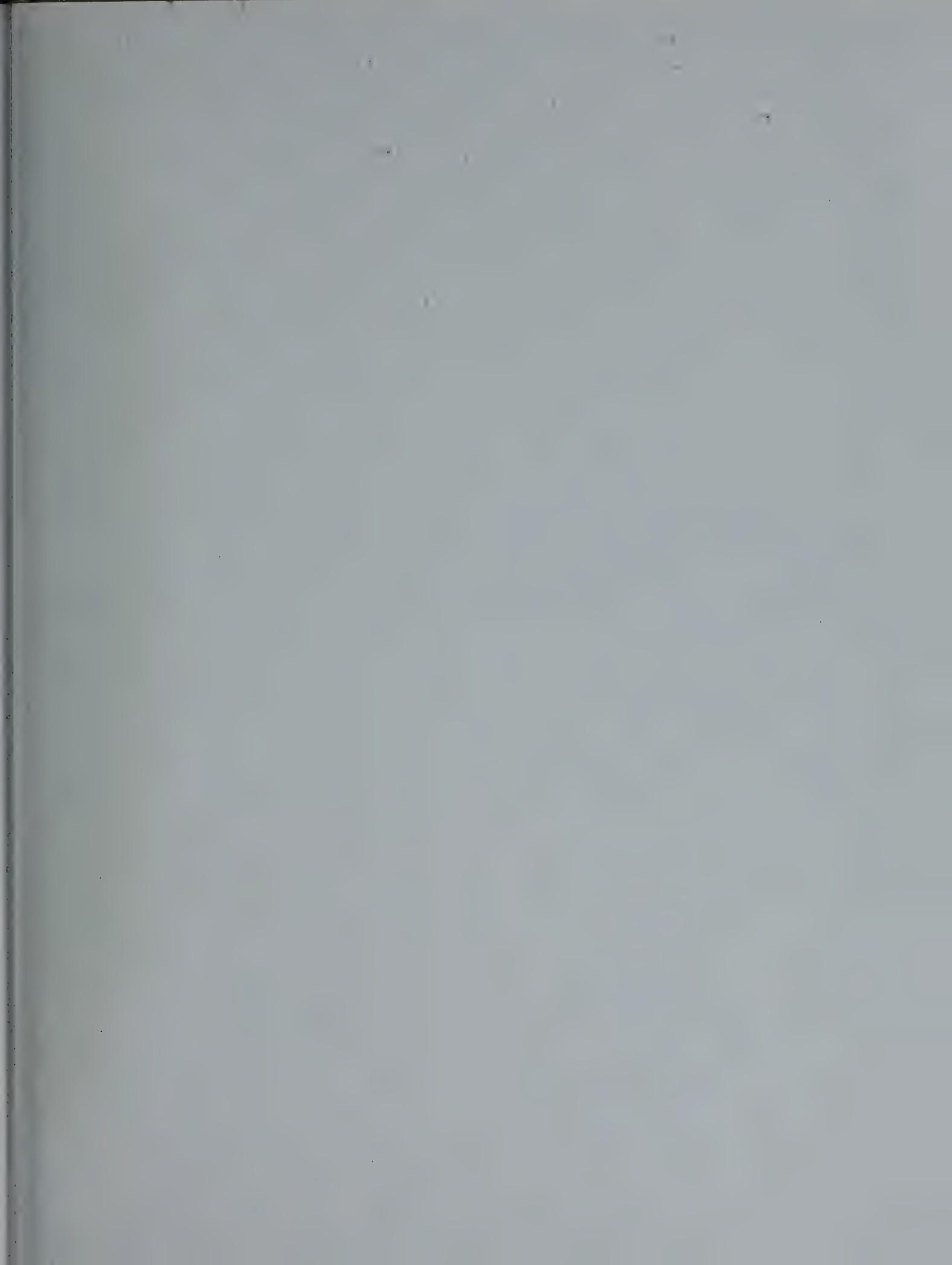
My short term goals are to better understand the Porter-Cologne Water Quality Control Act. The Act has defined the Legislative intent by which the Water Quality Control Board needs to preserve, enhance and restore the quality of California's water resources, and to ensure their efficient use to benefit present and future generations. I am willing to accept that responsibility for the coordination and control of water quality within California.

Long term goals are to ensure that the decisions made by the North Coast Region are continued for the protection and enhance the quality of water for all beneficial users. This can be accomplished by applying the Best Management Practices as adopted by the current Regional Board. The need to get past the legacy of the past, the restoration of water course is a primary goal of mine to be accomplished over the next several years. Proposition 40 and Proposition 50 can be a catalyst to began that restoration. The sooner those grant funds can be dispersed, the sooner the water quality can be restored. Using the best management practices and the ability to coordinate all jurisdiction involved, this can be accomplished. I can not, nor any one else, correct what our forefathers did in the past. We can enforce the current California Water Codes and allow no further degradation of all water courses. This may mean that certain users will need to change their practices to comply with current laws and changes as they occur.

Thank you for the opportunity to appear before your committee. I look forward to my confirmation hearing June 18th, 2003.

Sincerely yours,


GERALD D. COCHRAN
Assessor
Member, North Coast Regional Board



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2

